TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900.

No. 18

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, TRUSTEES, AND THE CENTRAL TRUST COMPANY, OF NEW YORK

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

VOLUME I

(Pages 1 to 400 Inclusive)

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 494

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, Trustees, AND THE CENTRAL TRUST COMPANY, OF NEW YORK,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

VOLUME 1

(PAGES 1—400 Inclusive.)

Appeal from the Circuit Court of the United States for the Southern District of California.

LIST OF EXHIBITS
BROUGHT UP AS ORIGINAL DOCUMENTS
AND NOT PRINTED.

PLAINTIFF'S EXHIBITS:

No. 13. Map Atlantic & Pacific Railroad from San Miguel Mission to Western Boundary of Los Angeles County and Map Atlantic & Pacific Railroad from a Point in Township 7 North, Range 7 East to the Colorado River.

No. 14. Map of Atlantic & Pacific Railroad from Western Boundary of Los Angeles County to a Point in Township 7 North, Range 7 East.

No. 15. Map of Atlantic & Pacific Railroad from San Francisco to San Miguel Mission.

(Nos. 9 to 12, Inclusive. Maps of Location of Atlantic & Pacific Railroad East of Colorado River. Not Printed or brought up, as there is no Controversy about their Sufficiency in this Case.)

DEFENDANTS' EXHIBITS:

No. 47 A. Map Fourth Constructed Section Southern Pacific Railroad, Branch Line. (Exhibit No. 59 in Case No. 184.) (Afterward inserted. See under Heads "Exhibits" and "Maps.")

No. 47 B. Map First Constructed Section Southern Pacific Railroad, Branch Line. (Exhibit No. 60 in Case No. 184).

No. 47 C. Map Second Constructed Section Southern Pacific Railroad, Branch Line. (Exhibit No. 61 in Case No. 184).

No. 47 D. Map Third Constructed Section Southern Pacific Railroad, Branch Line. (Exhibit No. 62 in Case No. 184.)

No. 47 E. Map Fourth Constructed Section Southern Pacific Railroad, Branch Line. (Exhibit No. 63 in Case No. 184.)

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No. 291. Map Eleventh Constructed Section Southern Pacific Railroad, Main Line. (Afterward inserted. See under Heads "Exhibits" and "Maps.")

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No. 304. Withdrawal Map, Southern Pacific Railroad, Main Line, Third and Fourth Sections; with Letters Ordering Withdrawal, Attached.

No. 305. Withdrawal Map, Southern Pacific Railroad, Main Line, Fifth Section; with Letters Ordering Withdrawal, Attached.

No. 306. Withdrawal Map, Southern Pacific Railroad, Main Line, Sixth Section; with Letters Ordering Withdrawal, Attached.

No. 307. Withdrawal Map, Southern Pacific Railroad, Main Line, Seventh Section; with Letters Ordering Withdrawal, Attached.

No. 308. Withdrawal Map, Southern Pacific Railroad Main Line, Eighth and Ninth Sections; with Letters Ordering Withdrawal, Attached.

No. 309. Withdrawal Map, Southern Pacific Railroad, Main Line, Tenth Section; with Letters Ordering Withdrawal Attached.

No. 310. Withdrawal Map, Southern Pacific Railroad, Main Line, Seventeenth Section; with Letters Ordering Withdrawal, Attached.

No. 323. Withdrawal Map, Southern Pacific Railroad, Branch Line, fifth Section; with Letters Ordering Withdrawal, Attached.

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Exhibits:		
1. Letter of Dec. 7, 1893, S. W. Lamoreux, Commissioner of the General Land Office, to C. P. Huntington, enclosing list of lands of which reconveyance was demanded, and copy of letter of November 29, 1893, from Hoke Smith, Secretary of the Interior, to the Commissioner of the General Land Office	430	440
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4. Articles of association, amalgamation and consolidation of December 17, 1874, Southern Pacific Railroad Company with Los Angeles and San Pedro Railroad Company	454	465
5. Articles of association, incorporation, amalgamation and consolidation of the Southern Pacific Railroad Company with the San Jose and Almaden Railroad Company and sixteen other railroad companies, dated May 4, 1888	463	476

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6. Articles of association of the Southern Pacific Railroad Company, dated November 29, 1865 (Master's Exhibit 195 in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 2, before Examiner Lamme, in Case No. 184)	504	526
7. Articles of association, amalgamation and consolidation of the San Francisco and San Jose, the Santa Clara and Pajaro Valley, the Southern Pacific and the California Southern Railroad Companies, dated October 11, 1870, forming part of deposition of J. L. Willcutt (Master's Exhibit 102 in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 3, before Examiner Lamme, in Case No. 184)	511	532
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16. Letter dated December 15, 1866, O. H. Browning, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office (Master's Exhibit 186, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 12, before Examiner Lamme, in Case No. 184)	576	593
17. Letter dated November 29, 1871, C. J. Hillyer, Attorney for the A. & P. R. R. Co., to Columbus Delano, Secretary of the Interior (Master's Exhibit 187 in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 13, before Examiner Lamme, in Case No. 184)	578	595
18. Letter dated December 1, 1871, B. R. Cowan, acting Secretary of the Interior, to Willis Drummond, Commissioner General Land Office (Master's Exhibit 188 in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 14, before Examiner Lamme in Case No. 184)	580	597
19. Letter dated February 3, 1872, C. J. Hillyer, attorney for A. & P. R. R. Co., to Columbus De-		

	Orig'nal.	Print
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20. Letter dated February 6, 1872, C. Delano, Secretary of the Interior, to Willis Drummond, Commissioner G. L. O. (Master's Exhibit 190 in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 16, before Examiner Lamme, in Case No. 184)	584	602
21. Letter dated March 8, 1872, C. J. Hillyer, attorney for A. & P. R. R. Co., to Columbus Delano, Secretary of the Interior (Master's Exhibit 191, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 17, before Examiner Lamme, in Case No. 184)	586	604
22. Letter dated April 15, 1874, C. Delano, Secretary of the Interior, to Willis Drummond, Commissioner General Land Office, enclosing copy of opinion dated March 16, 1874, W. H. Smith, Assistant Attorney General, to C. Delano, Secretary of the Interior (Master's Exhibit 193, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 19, before Examiner Lamme, in case 184)	588	607
23. Letter dated April 16, 1872, B. R. Cowen, Acting Secretary of the Interior, to Willis Drummond, Commissioner G. L. O., enclosing copy of letter dated April 10, 1872, B. R. Cowen, Acting Secretary of the Interior, to Francis B. Hayes, President of A. & P. R. R. Co., and copy of letter dated April 11, 1872, B. R. Cowen, Acting Secretary of the Interior to Francis B. Hayes, President, etc. (Master's Exhibit 194, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 20, before Examiner Lamme, in Case No. 184)	599	619

	Original.	Print.
25. Letter dated April 22, 1872, Willis Drummond, Commissioner G. L. O., to Register and Receiver, Los Angeles, Cal. (Master's Exhibit 129, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 22, before Examiner Lamme in Case 184)	603	623
26. Letter dated April 16, 1874, C. Delano, Secretary of the Interior, to Willis Drummond, Commissioner G. L. O. (Master's Exhibit 130 in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 23, before Examiner Lamme, in Case 184)	606	625
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28. Letter dated March 23, 1886, L. Q. C. Lamar, Secretary, to the Commissioner of the General Land Office (Master's Exhibit 175, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 27, before Examiner Lamme in Case No. 184).	611	630
29. Letter dated April 8, 1886, Wm. A. J. Sparks, Commissioner, to Register and Receiver, Los Angeles, Cal. (Master's Exhibit 176 in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 28, before Examiner Lamme in Case 184)	617	637
30. Map showing limits of grant to the Atlantic and Pacific R. R. Co., in the Los Angeles Land District, with intersecting limits of grant to the Southern Pacific R. R. Co. (Master's Exhibit 163 in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 29, before Examiner Lamme in Case No. 184)	620	640
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	Original.	Print.
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32. Certified copies of certain papers filed in case Nos. 67, 68 and 69, consolidated, U. S. vs. Southern Pacific Railroad Company et al. (Plaintiff's Exhibit 31, before Examiner Lamme in Case No. 184)	624	643
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Final decree of the Circuit Court of the United States for the Southern District of California	686	713
33. Judgment-roll in Case No. 177, in United States Circuit Court for the Southern District of California, entitled The United States of America vs. The Southern Pacific Railroad Company et al. (Plaintiff's Exhibit 40, before Examiner Lamme, in Case No. 184)	689	716
Record of enrollment	689	716
Bill of complaint	693	721
Subpoena for the City Brick Company	707	734
Marshal's return of subpoena	708	735
Subpoena for Thomas Goss	709	736
Marshal's return of subpoena	710	737
Subpoena for Edward Simmons	711	738

	Original.	Print.
Marshal's return of subpoena	712	739
Subpoena for Albert A. Hubbard	713	740
Marshal's return of subpoena	714	741
Amended bill of complaint	716	743
Subpoena for D. O. Mills	736	763
Marshal's return of subpoena	737	764
Subpoena for Gerrit L. Lansing	738	765
Marshal's return of subpoena	739	766
Subpoena for the Southern Pacific Railroad Company	740	767
Marshal's return of subpoena	741	768
Order directing absent defendants to appear...	743	769
Answer of the City Brick Company	748	773
Demurrer of Thomas Goss	751	776
Answer of the defendants to the first amended bill in equity	753	778
Replication	780	805
Order withdrawing demurrer and answer of certain defendants	782	807
Order restoring answer and submitting cause..	784	808
Decree	786	811
Certificate to enrolled papers	788	812
Mandate of Supreme Court	789	813
Decree pursuant to mandate	792	816
34. Opinion and decision of the United States Supreme Court in cases of The United States vs. Colton Marble and Lime Company, and The United States vs. The Southern Pacific Railroad Company, Nos. 862 and 863, on the docket of the United States Supreme Court (Plaintiff's Exhibit 43, before Examiner Lamme in Case No. 184)	794	818

	Original.	Print.
35. Opinion and decision of the United States Supreme Court in Case No. 177, on Docket of Circuit Court for the Southern District of California, being No. 921, on Docket of United States Supreme Court (Plaintiff's Exhibit 42, before Examiner Lamme, in Case No. 184)	800	824
36. Decision of June 8, 1892, by Secretary of the Interior in case of the Southern Pacific R. R. Co. vs. Milton McWharter (Plaintiff's Exhibit 35, before Examiner Lamme in case No. 184)..	824	851
37. Decision of December 12, 1890, by Secretary of the Interior in the case of William C. Morgan, vs. The Southern Pacific R. R. Co. (Plaintiff's Exhibit 36, before Examiner Lamme in Case 184)	830	858
38. Letter dated January 29, 1876, L. K. Lippincott, Acting Commissioner to Register and Receiver, Los Angeles (Plaintiff's Exhibit 37, before Examiner Lamme, in Case No. 184)	834	862
39. Map showing 20 and 30 mile limits of Atlantic and Pacific Railroad Co., from T. 4 N., R. 16 W., S. B. M., to Santa Barbara, Cal. (Plaintiff's Exhibit 44, before Examiner Lamme in Case No. 184)	838	868
40. Map of general route of Southern Pacific Railroad from Tehachipi Pass, by way of Los Angeles, to the Colorado River, also letter of Acting Secretary of the Interior to the Commissioner of the General Land Office of April 3, 1871 (Plaintiff's Exhibit 45, before Examiner Lamme, in Case No. 184)	839	869
Certificate of Commissioner of General Land Office	839	869
Letter of Acting Secretary of Interior	840	870
Map	842	872

	Original.	Print.
41. Map of Atlantic and Pacific Railroad from west boundary line of Los Angeles County to a point in T. 7 N., R. 7 E., S. B. M., showing 20 and 30 mile limits, also letter transmitting the same (Plaintiff's Exhibit 48, before Examiner Lamme in Case No. 184)	843	873
Certificate of Commissioner of General Land Office	843	873
Letter of Commissioner to Register and Receiver	844	874
Map	846	876
42. Letter dated November 23, 1874, S. S. Burdette, Commissioner, to Register and Receiver, San Francisco, Cal. (Plaintiff's Exhibit 54, before Examiner Lamme, in Case No. 184)	847	877
43. Letter dated November 23, 1874, S. S. Burdette, Commissioner, to Register and Receiver, Visalia, Cal. (Plaintiff's Exhibit 53, before Examiner Lamme in case No. 184)	849	879
44. Letter dated April 22, 1872, Willis Drummond, Commissioner, to Register and Receiver, San Francisco, Cal. (Plaintiff's Exhibit 55 before Examiner Lamme, in case No. 184)	851	881
45. Letter dated May 7, 1872, H. C. Austin, Register, to Willis Drummond, Commissioner General Land Office (Plaintiff's Exhibit 56 before Examiner Lamme, in Case No. 184)	853	883
46. Letter dated Oct. 18, 1877, C. Schurz, Secretary, to the Commissioner of the General Land Office (Plaintiff's Exhibit 57 before Examiner Lamme, in Case No. 184)	855	885
50. Letter dated Nov. 11, 1869, J. D. Cox, Secretary, to Jos. S. Wilson, Commissioner of the General Land Office (Plaintiff's Exhibit No. 59 before Examiner Lamme, in Case No. 184)	859	889

	Original.	Print.
51. Map of Atlantic and Pacific Railroad from western boundary line of Los Angeles county to San Miguel Mission, Cal.; also letter of Nov. 23, 1874, Commissioner of the G. L. O. to Register and Receiver at Los Angeles, transmitting the same (Plaintiff's Exhibit 49 before Examiner Lamme, in Case No. 184).....	863	893
Certificate of Commissioner of General Land Office	863	893
Letter of Commissioner to Register and Receiver	864	894
Map	866	896
52. Letter dated August 2, 1878, C. Schurz, Secretary, to Commissioner of the General Land Office, enclosing copy of opinion of Charles Devens, Attorney General, to Carl Schurz, Secretary of the Interior, dated July 16, 1878.....	867	897
Letter of Secretary to Commissioner of the General Land Office	867	897
Opinion of Attorney General	873	903
53. Decision of Oct. 5, 1893, by Wm. H. Sims, First Assistant Secretary of the Interior, in the case of Mattie Moore vs. Norman A. M. Kellogg...	885	916
54. Letter dated Nov. 2, 1869, J. D. Cox, Secretary, to Jos. S. Wilson, Commissioner of the General Land Office	890	921
55. Map of the Atlantic and Pacific Railroad Co., showing limits in the Los Angeles Land District	893	924
56. Letter dated April 6, 1872, Francis B. Hayes, President of the Atlantic and Pacific Railroad Company, to C. Delano, Secretary of the Interior (Defendants' Exhibit 78 before Examiner Lamme, in Case No. 184).....	1195	1235

	Original.	Print.
57. Letter dated April 11, 1872, W. W. Curtis, Acting Commissioner of the General Land Office, to C. Delano, Secretary of the Interior (Defendants' Exhibit 81 before Examiner Lamme in Case 184).....	1198	1237
58. Abstract copy of a record book of maps in the office of the Commissioner of the General Land Office	1201	1239
60. Letter dated August 15, 1872, N. L. Jeffries, attorney for A. P. R. R. Co., to the Secretary of the Interior (Master's Exhibit 119 in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 26 before Examiner Lamme, in Case No. 184)	1208	1246
64. Deposition de bene esse of Harrison W. Gardiner, on behalf of the complainants in the case of the United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 184, before Asa P. French, Notary Public, at Boston, Mass.....	1211	1247
66. Deposition of Thomas F. Laycock, a witness on behalf of complainants, in the case of the United States of America, complainants, vs. The Southern Pacific R. R. Co. et al., defendants, No. 184, before E. H. Lamme, Esq., standing Master and Examiner in Chancery	1221	1256
71. Letter dated January 3, 1867, O. H. Browning, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office, enclosing copy of letter dated Sept. 28, 1866, F. G. Phelps, President S. P. R. R. Co., to Secretary of the Interior	1234	1270
Letter of Secretary	1235	1271
Letter of T. G. Phelps	1236	1272
72. Letter dated March 19, 1867, O. H. Browning, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office.....	1237	1273

	Original.	Print.
73. Letter dated July 14, 1868, O. H. Browning, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office.....	1240	1275
74. Letter dated Aug. 20, 1868, O. H. Browning, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office.....	1246	1281
75. Letter dated February 21, 1870, J. D. Cox, Secretary of the Interior, to C. P. Huntington..	1249	1283
76. Letter dated Nov. 11, 1869, J. D. Cox, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office	1252	1285
77. Letter dated Dec. 15, 1869, to J. D. Cox, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office.....	1256	1289
78. Letter and decision dated May 9, 1873, C. Delano, Secretary of the Interior, to Willis Drummond, Commissioner of the General Land Office	1275	1301
Evidence for Defendants:		
Deposition of William H. Robinson	424	436
Deposition of J. L. Willcutt	1300	1311
Deposition of Jerome Madden	1304	1316
Deposition of Jerome Madden, recalled.....	1330	1341
Deposition of Jerome Madden, recalled	1352	1364
Deposition of J. L. Willcutt, recalled.....	1359	1371
Deposition of Jerome Madden, recalled.....	1363	1374
Deposition of William Salomon (See Defendants' Exhibit No. 98)		
Deposition of Jerome Madden in Case No. 184..	1501	1500
Deposition of Gerrit L. Lansing in Case No. 184	1509	1508
Deposition of Charles F. Crocker in Case No. 184	1545	1544

	Original.	Print.
Deposition of J. L. Willcutt in Case No. 184	1549	1547
Deposition of Charles J. Wilder in Case No. 184	1885	1853
Deposition of Jerome Madden	2079	2051
Deposition of William Sexton	2106	2077
Deposition of George T. Folsom	2111	2081
Deposition of Frank S. Douty	2115	2085
Exhibits:		
1. Resolution of Board of Directors of Southern Pacific Railroad Company, Nov. 24, 1866	1383	1395
2. Letter dated Sept. 28, 1866, T. G. Phelps, President S. P. R. R., to Secretary of the Interior (forming part of Master's Exhibit 179 in Case Nos. 67, 68 and 69, consolidated)	1387	1398
3. Map (accompanying Exhibit 2) of preliminary survey, under the act of Congress of July 27, 1866, of the Southern Pacific Railroad, from San Francisco to the Colorado river (Master's Exhibit 179 in Case Nos. 67, 68 and 69, consolidated)	1388	1400
4. Certificate (to copy of map being Exhibit 3) of the Commissioner of the General Land Office, dated January 9, 1882, and letter dated January 3, 1867, O. H. Browning, Secretary, to Jos. S. Wilson, Commissioner of the General Land Office (forming part of Master's Exhibit 179 in Case Nos. 67, 68 and 69, consolidated)	1385	1397
Letter of the Secretary	1386	1398
31A. Letter dated March 22, 1871, Chas. Crocker, President Southern Pacific Railroad Co., to Secretary of the Interior, which letter was accompanied by a map which is Exhibit 31 herein (Plaintiff's Exhibit No. 40, substituted)	1136	1183
31B. Letter dated April 3, 1871, Walter H. Smith, Acting Secretary of the Interior, to Willis Drum-		

	Original.	Print.
mond, Commissioner of the General Land Office, which letter was accompanied by a map which is Exhibit 31 herein (Plaintiff's Exhibit No. 40, substituted)	1139	1136
43. Report of Railroad Commissioners dated April 15, 1874, on first section of the Southern Pacific Railroad, act of March 3, 1871; letter dated May 8, 1874, B. R. Cowen, Acting Secretary, to the President of the United States, and approval by the President of the United States (Defendants Exhibit 29 before Examiner Potter in Case No. 184)	1389	1401
Report of Commissioners	1390	1401
Letter of the Secretary	1401	1414
Approval by the President	1402	1415
44. Report of Railroad Commissioners dated October 21, 1875, on second section of the Southern Pacific Railroad, act of March 3, 1871; letter dated Nov. 8, 1875, Z. Chandler, Secretary, to the President of the United States, and approval by the President of the United States (Defendants' Exhibit 30 before Examiner Potter, in Case No. 184)	1403	1415
Report of Commissioners	1404	1416
Letter of the Secretary	1414	1426
Approval by the President	1415	1427
45. Report of Railroad Commissioners, dated June 22, 1876, on third section of the Southern Pacific Railroad, act of March 3, 1871; letter dated July 10, 1876, Z. Chandler, Secretary, to the President of the United States, and approval by the President of the United States (Defendants' Exhibit 31 before Examiner Potter in Case No. 184)	1416	1428
Report of the Commissioners	1417	1428
Letter of the Secretary	1427	1438

	Original.	Print.
Approval by the President	1428	1439
46. Report of Railroad Commissioners, dated February 17, 1877, on fourth section of the Southern Pacific Railroad, act of March 3, 1871; letter dated March 1, 1877, Charles T. Gorham, Acting Secretary, to the President of the United States, and approval by the President of the United States (Defendants' Exhibit 32 before Examiner Potter in Case No. 184)	1429	1440
Report of Commissioners	1430	1440
Letter of the Acting Secretary	1445	1456
Approval by the President	1446	1457
47. Report of Railroad Commissioners dated December 6, 1877, on fifth section of the Southern Pacific Railroad, act of March 3, 1871; letter dated January 19, 1878, C. Schurz, Secretary, to the President of the United States, and approval by the President of the United States (Defendants' Exhibit 33 before Examiner Potter in Case No. 184	1447	1458
Report of the Commissioners	1448	1458
Letter of the Secretary	1463	1474
Approval by the President	1465	1476
47A. Map Fourth. Constructed section Southern Pacific Railroad, Branch line. (Exhibit No. 59 in Case No. 184)	1467	1476A
98. Deposition de bene esse of William Salomon, on behalf of defendants, in the case of the United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 184, taken before Patrick A. Nolan, Esq., Notary Public, at New York	1476	1477
Defendants' exhibit before the Notary Public in New York, No. 1, circular dated March 8, 1880, offering bonds of the Southern Pacific Railroad for sale	1496	1496

	Original.	Print.
105. Portions of the Report of Stephen Potter, Special Examiner, in the case of the United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 184; including exhibits filed before him on behalf of defendants in that case	1501	1500
Portions of the depositions of Jerome Madden	1501	1501
Defendants' exhibit before Special Examiner Potter, No. 1; in Case No. 184; appointment of Jerome Madden as land agent for the Southern Pacific Railroad Company	1502	1502
Deposition of Gerrit L. Lansing	1509	1508
Exhibit M, before Special Examiner Potter, in Case No. 184, on cross-examination; lease dated February 10, 1885, to Southern Pacific Railroad Company of Kentucky, by Southern Pacific Railroad Company of California, and seven other companies	1535	1534
Deposition of Charles F. Crocker	1545	1544
Deposition of J. L. Willcutt	1549	1547
Defendants' exhibits before Special Examiner Potter, in Case No. 184:		
65. Letter dated April 3, 1871, Walter H. Smith, Acting Secretary of the Interior, to Charles Crocker, President Southern Pac. R. R. Co.	1622	1622
66. Letter dated August 5, 1868, O. H. Browning, Secretary of the Interior, to President of the Southern Pacific R. R. Co	1624	1623
67. Letter dated September 26, 1868, W. T. Otto, Acting Secretary of the Interior, to T. G. Phelps, Pres. Southern Pac. R. R. Co.	1628	1626
68. Letter dated August 31, 1870, J. D. Cox, Secretary of the Interior, to Lloyd Tevis, Pres. Southern Pac. R. R. Co	1629	1627

Original. Print.

69. Letter dated Sept. 1, 1876, Z. Chandler, Secretary of the Interior, to Chas. Crocker, Pres. Southern Pacific R. R. Co.....1631 1628

70. Series of thirty-seven letters, dated respectively July 13, 1878; July 22, 1878; July 26, 1878; July 29, 1878; August 1, 1878; August 27, 1878; Sept. 3, 1878; Sept. 9, 1878; Sept. 20, 1878; Sept. 27, 1878; October 1, 1878; October 4, 1878; October 7, 1878; October 10, 1878; October 12, 1878; October 15, 1878; October 16, 1878; October 17, 1878; October 19, 1878; October 22, 1878; October 24, 1878; April 17, 1879; May 17, 1879, September 1, 1879, February 28, 1880; March 18, 1880; March 22, 1880; May 6, 1880; July 2, 1880; July 22, 1880; September 7, 1880; September 18, 1880; March 1, 1881; March 19, 1881; April 19, 1881; May 12, 1881; May 12, 1881—Auditor of Railroad Accounts and Commissioner of Railroads to President, Secretary and General Accountant Southern Pacific Railroad Company 1635 1632

71. Letter dated Oct. 2, 1868, W. T. Otto, Acting Secretary of the Interior, to C. P. Huntington, Attorney S. P. R. R. Co.....1677 1665

72. Letter dated November 2, 1881, Jos. K. McCammon, Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific R. R. Co. 1678 1666

73. Letter dated February 1, 1882, Jos. K. McCammon, Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific R. R. Co. 1680 1667

74. Letter dated May 20, 1882, W. H. Armstrong, Commissioner of Railroads, to J. L. Willcutt, Sec. Southern Pacific R. R. Co...1682 1668

	Original.	Print.
75. Letter dated November 9, 1882, Wm. H. Armstrong, Commissioner of Railroads, to J. L. Willcutt, Sec. Southern Pacific R. R. Co..... 1683		1669
76. Letter dated Aug. 11, 1883, W. H. Armstrong, Commissioner of Railroads, to J. L. Willcutt, Secretary S. Pac. R. R. Co.....1685		1671
77. Letter dated April 3, 1884, F. B. Pickerill, for the Commissioner of Railroads, to J. L. Willcutt, Sec. Southern Pacific R. R. Co..1686		1672
78. Letter dated Sept. 6, 1884, Thos. J. Walker, in charge of office of Commissioner of Railroads, to J. L. Willcutt, Sec. Southern Pacific R. R. Co... 1688		1673
79. Letter dated February 10, 1885, F. B. Pickerill, to J. W. Wilcutt, Secretary Southern Pacific R. R. Co. 1689		1674
80. Letter dated May 22, 1885, J. E. Johnston, Commissioner of Railroads, to J. L. Wilcutt, Secretary Southern Pacific R. R. Co..1690		1675
81. Letter dated December 21, 1885, J. E. Johnston, Commissioner of Railroads, to Charles Crocker, President Southern Pacific R. R. Co.. 1692		1676
82. Letter dated Aug. 30, 1886, Edward Herrick, in charge of office of Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific R. R. Co. 1696		1680
83. Letter dated May 7, 1887, Edward Herrick, for the Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific R. R. Co..... 1697		1681
84. Letter dated May 7, 1887, Edward Herrick, for the Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific R. R. Co. 1698		1682

	Original.	Print.
85. Letter dated September 17, 1887, Edward Herrick, for the Commissioner of Railroads, to J. H. Willcutt, Secretary Southern Pacific R. R. Co.	1700	1684
86. Letter dated April 2, 1888, Edward Herrick, for the Commissioner of Railroads, to J. H. Willcutt, Secretary Southern Pacific R. R. Co.	1701	1685
87. Letter dated June 4, 1889, Edward Herrick, in charge of office of Commissioner of Railroads, to J. H. Willcutt, Secretary Southern Pacific R. R. Co.....	1702	1686
90. Trust mortgage, Southern Pacific Railroad Co., to D. O. Mills and Lloyd Tevis, Trustees, dated April 1, 1875.....	1703	1688
91. Deed of Trust, Southern Pacific Railroad Company of the first part, Southern Pacific Company, of the second part, and Central Trust Company of New York, of the third part, dated August 25, 1888.....	1741	1725
92. Letter dated October 24, 1889, W. M. Thompson, in charge of office of Commissioner of Railroads, to G. L. Lansing, Controller, Southern Pacific Co	1783	1769
93. Letter dated October 21, 1890, W. M. Thompson, in charge of office of Commissioner of Railroads, to G. L. Lansing, Secretary and Controller, Southern Pacific Railroad Company	1784	1770
94. Letter dated October 21, 1891, W. M. Thompson, bookkeeper, Commissioner of Railroads, to G. L. Lansing, Secretary and Controller, Southern Pacific Company....	1785	1771
95. Letter dated September 28, 1892, W. M. Thompson, bookkeeper, Commissioner of Railroads, to G. L. Lansing, Secretary and troller, Southern Pacific Company	1786	1772

	Original.	Print.
96. Letter dated September 16, 1893, F. E. Storm, bookkeeper, Commissioner of Railroads, to G. L. Lansing, Secretary and Controller, Southern Pacific Company	1787	1773
Exhibit L on cross-examination; extracts from the minutes of the Board of Directors of the Southern Pacific Railroad Company	1788	1774
Reference to the annual reports of the Auditor of Railroad Accounts made to the Secretary of the Interior for the years ending June 30, 1880; June 30, 1881; June 30, 1882; June 30, 1882, June 30, 1883; June 30, 1884; June 30, 1885; June 30, 1886; June 30, 1887; June 30, 1888; June 30, 1889; June 30, 1890; June 30, 1891; June 30, 1892	1879	1847
Deposition of Charles J. Wilder	1885	1853
Defendants' exhibits before Special Examiner Potter, in Case No. 184:		
120. Statement of account — the United States to the Southern Pacific Company, Pacific system, for transportation furnished in months of September, October and November, 1889	1904	1873
121. Request for transportation made to the Southern Pacific Company by Quartermaster's Department U. S. Army	1908	1881
122. Request for transportation made to the Southern Pacific Railroad Company by Quartermaster's Department U. S. Army..	1911	1883
132. Letter dated May 11, 1894, B. R. Cowen, Acting Secretary of the Interior, to W. W. Curtis, Acting Commissioner G. L. O.....	1914	1886
133. Letter dated Nov. 13, 1875, Z. Chandler, Secretary of the Interior, to S. S. Burdett, Commissioner General Land Office..	1918	1889

	Original.	Print.
134. Letter Dated July 22, 1876, Z. Chandler, Secretary of the Interior, to J. A. Williamson, Commissioner General Land Office.	1922	1892
135. Letter dated March 3, 1877, Chas. T. Gorham, Acting Secretary of the Interior, to J. A. Williamson, Commissioner General Land Office	1926	1894
136. Letter dated January 30, 1878, C. Schurz, Secretary of the Interior, to J. A. Williamson, Commissioner General Land Office...	1930	1897
137. Letter dated October 4, 1893, Wm. H. Sims, Acting Secretary of the Interior, to D. A. Chambers	1935	1901
106. Exhibits on behalf of defendants, filed with report of E. H. Lamme, standing Master and Examiner, in the case of the United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 184:		
79. Letter dated April 8, 1872, Francis B. Hayes, President of A. & P. R. R. Co. to Columbus Delano, Secretary of the Interior	1937	1902
114. Circular Number 15, of the General Land Office, dated January 24, 1867, in regard to selections in satisfaction of railroads and other Congressional grants	1942	1905
115. Circular of October 15, 1873, of the General Land Office, in modification of instructions of January 24, 1867	1963	1922
127. Letter dated December 22, 1893, S. W. Lamoreux, Commissioner of the General Land Office to John B. Bloss	1985	1940
164. Statement showing lands involved in this case selected by the Southern Pacific Railroad Company, lands patented, fees paid, etc.....	1987	1942

Original. Print.

178. Resolution of the Board of Directors of the Southern Pacific Railroad Company, adopted May 16, 1871, accepting terms, conditions, etc., of the act of Congress approved March 3, 1871..2011 1988

179. Patent No. 22, dated July 10, 1894, The United States of America, to the Southern Pacific Railroad Company—Lands of the primary limits...2013 1989

180. Patent No. 1, dated March 9, 1876, The United States of America, to the Southern Pacific Railroad Company, California, branch line, under Act of March 3, 1871 .....2020 1996

181. Patent No. 2, dated April 4, 1879, The United States of America, to the Southern Pacific Railroad Company, branch line, under Act of March 3, 1871 ....2028 2004

182. Patent No. 4, dated June 26, 1882, The United States of America, to the Southern Pacific Railroad Company, in California, branch line, under Act of March 3, 1871 .....2037 2012

183. Patent No. 6, dated December 27, 1883, The United States of America, to the Southern Pacific Railroad Company, branch line, under Act of March 3, 1871 ....2043 2018

184. Patent No. 8, dated August 8, 1884, The United States of America, to the Southern Pacific Railroad Company, branch line, under Act of March 3, 1871 ....2053 2028

185. Patent No. 9, dated January 9, 1885, The United States of America, to the Southern Pacific Railroad Company, branch line, under Act of March 3, 1871 .....2059 2033

186. Patent No. 10, dated January 9, 1885, The United States of America, to the Southern Pacific Railroad Company, branch line, under Act of March 3, 1871 .....2066 2039

Original. Print.

187. List No. 42, Lands selected by The Southern Pacific Railroad Company, Granted Limits, Main Line 2124 2091

189. List No. 77, Lands selected by the Southern Pacific Railroad Company, Granted Limits, Main Line 2139 2107

191. List No. 80, Lands selected by the Southern Pacific Railroad Company, Granted Limits, Main Line 2163 2131

193. List No. 1, Lands selected by the Southern Pacific Railroad Company, in the Los Angeles Land District, State of California, Granted Limits 2178 2145

195. List No. 2, Lands selected by the Southern Pacific Railroad Company, in the Los Angeles Land District, State of California, Granted Limits...2195 2161

197. List No. 4, Lands selected by the Southern Pacific Railroad Company, in the Los Angeles Land District, State of California, Granted Limits 2227 2193

199. List No. 5, Lands selected by the Southern Pacific Railroad Company, in the Los Angeles Land District, State of California, Granted Limits 2241 2207

201. List No. 8, Lands selected by the Southern Pacific Railroad Company, Granted Limits 2249 2214

203. List No. 11, Lands selected by the Southern Pacific Railroad Company, Granted Limits.....2259 2223

205. List No. 13, Lands selected by the Southern Pacific Railroad Company, Granted Limits 2280 2243

207. List No. 17, Lands selected by the Southern Pacific Railroad Company, Granted Limits 2289 2251

209. List No. 18. Lands selected by the Southern Pacific Railroad Company, Granted Limits....2306 2267

	Original.	Print.
211. List No. 21. Lands selected by The Southern Pacific Railroad Company, Granted Limits, Branch Line	2315	2275
213. List No. 28. Lands selected by The Southern Pacific Railroad Company, Granted Limits	2340	2299
215. List No. 30. Lands selected by The Southern Pacific Railroad Company, Granted Limits	2349	2307
217. List No. 33. Lands selected by The Southern Pacific Railroad Company, Granted Limits	2360	2317
219. List No. 34. Lands selected by The Southern Pacific Railroad Company, Granted Limits	2373	2331
221. List No. 63. Lands selected by The Southern Pacific Railroad Company, Granted Limits, Branch Line	2384	2342
223. List No. 5. Lands selected by the Southern Pacific Railroad Company, Indemnity Limits	2395	2351
225. List No. 6. Lands selected by the Southern Pacific Railroad Company, Indemnity Limits	2420	2380
227. List No. 7. Lands selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line	2434	2394
229. List No. 12. Lands selected by the Southern Pacific Railroad Company, Indemnity Limits	2452	2414
231. List No. 19. Lands selected by the Southern Pacific Railroad Company, Indemnity Limits	2466	2428
233. List No. 20. Lands selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line	2481	2446
235. List No. 25. Lands selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line	2491	2456
237. List No. 26. Lands selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line	2518	2498

	Original.	Print.
239. List No. 28. Lands selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line 2531		2512
241. List No. 30. Lands selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line 2542		2522
256. Three letters, dated March 22, 1867, by the Commissioner of the G. L. O., to the Register and Receiver at San Francisco, Visalia and Stockton, respectively, each transmitting a map, also a copy of said map showing land grant made by Act of Congress of July 27, 1866, to Southern Pacific Railroad Co.....	894	925
Certificate of Acting Commissioner of General Land Office	894	925
Letter dated March 22, 1867, Jos. S. Wilson, Commissioner, to Register and Receiver, San Francisco, Cal....	899	929
Letter dated March 22, 1867, Jos. S. Wilson, Commissioner, to Register and Receiver, Visalia, Cal	901	931
Letter dated March 22, 1867, Jos. S. Wilson, Commissioner, to Register and Receiver, Stockton, Cal.....	903	933
Map showing land grant made by Act of Congress of July 27, 1866, to Southern Pacific Railroad Co.....	905	936
257. Eight letters relative to withdrawal of lands on account of the grant to the Southern Pacific Railroad Company, attached and filed as one exhibit	906	937
Letter dated July 14, 1868, O. H. Browning, Secretary, to Jos. S. Wilson, Commissioner of the General Land Office, revoking order of withdrawal of March 19, 1867	906	937

	Original.	Print.
Letter dated August 20, 1868, O. H. Browning, Secretary, to Jos. S. Wilson, Commissioner of the General Land Office, suspending, in part, order of revocation of July 14, 1868	910	942
Letter dated November 2, 1869, J. D. Cox, Secretary, to Jos. S. Wilson, Commissioner of the General Land Office, revoking order of Aug. 20, 1868	911	942
Letter dated Dec. 15, 1869, J. D. Cox, Secretary, to Jos. S. Wilson, Commissioner of the General Land Office, suspending order of Nov. 2, 1869,	912	944
Letter dated July 26, 1870, J. D. Cox, Secretary, to Jos. S. Wilson, Commissioner of the General Land Office, directing proper local officers to be advised that reservation of 1867 be respected	913	945
Letter dated July 29, Jos. S. Wilson, Commissioner, to Register and Receiver, San Francisco, Cal., directing that reservation as indicated in Commissioner's letter of March 22, 1867, be respected	913	946
Letter dated July 29, 1870, Jos. S. Wilson, Commissioner, to Register and Receiver at Visalia, California, directing that reservation as indicated in Commissioner's letter of March 22, 1867, be respected	914	947
Letter dated July 29, 1870, Jos. S. Wilson, Commissioner, to Register and Receiver, Stockton, California, directing that reservation as indicated in Commissioner's letter of March 22, 1867, be respected	915	947
258. Letters to the Commissioners appointed to examine the first section of the Southern Pacific Railroad	917	949
Letter dated July 22, 1870, from J. D. Cox, Secretary	917	950

	Original.	Print.
Letter dated November 25, 1870, from C. Delano, Secretary	919	952
259. Report of Railroad Commissioners dated October 29, 1870, to the Secretary of the Interior; amended report December 29, 1870; Letter dated January 18, 1871, C. Delano, Secretary to the President of the United States; and all endorsements, including approval by the President of the United States	923	955
Report of Commissioners	923	956
Amended Report	931	963
Letter of the Secretary	939	973
Approval by the President	940	975
261. Letter of Instructions, dated August 3, 1871, B. R. Cowen, Acting Secretary of the Interior, to the Commissioners appointed to examine the 2nd section of the Southern Pacific Railroad	942	976
262. Report of Railroad Commissioners, dated September 12, 1871, on 2nd section of Southern Pacific Railroad, commencing at or near Gilroy; Letter dated Oct. 13, 1871, C. Delano, Secretary, to the President of the United States; and all endorsements, including approval by the President, dated Oct. 23, 1871	946	980
Report of the Commissioners	946	981
Letter of the Secretary	952	988
Approval by the President	953	989
264. Appointment of Commissioners to Examine Southern Pacific Railroad, main line, July 23, 1872	955	990
265. Letter of instructions dated July 23, 1872, W. H. Smith, Acting Secretary of the Interior, to the Commissioners appointed to examine the 3rd section of the Southern Pacific Railroad, main line	958	993

	Original.	Print.
266. Report of Railroad Commissioners, dated September 14, 1872, on the 3d section of Southern Pacific Railroad, main line; Letter dated September 28, 1872, B. R. Cowen, Acting Secretary, to the President of the United States, and all endorsements, including approval by the President of the United States	962	998
Report of the Commissioners	962	998
Letter of the Secretary	971	1008
Approval by the President	972	1010
268. Letter of instructions dated July 7, 1873, C. Delano, Secretary of the Interior, to the Commissioners appointed to examine the 4th section of the Southern Pacific Railroad, main line	974	1011
269. Report of Railroad Commissioners dated July 23, 1873, on 4th section of Southern Pacific Railroad, main line; Letter dated Aug. 5, 1873, B. R. Cowen, Acting Secretary, to the Presirent of the United States; and all indorsements including approval by the President of the United States	977	1014
Report of the Commissioners	977	1014
Letter of the Secretary	985	1024
Approval by the President	986	1026
271. Letter of instructions dated July 2, 1874, C. Delano, Secretary of the Interior, to the Comsioners appointed to examine the 5th section of the Southern Pacific Railroad, main line	988	1027
272. Report of Railroad Commissioners dated September 19, 1874, on 5th section of Southern Pacific Railroad, main line; Letter dated Oct. 9, 1874, B. R. Cowen, Acting Secretary, to the President of the United States, and all endorsements, including approval by the President of the United States	990	1029

	Original.	Print.
Report of the Commissioners	990	1030
Letter of the Secretary	998	1039
Approval by the President	999	1040
274. Letter of instructions dated June 23, 1875,C. Delano, Secretary of the Interior, to the Commissioners appointed to examine the 6th section of the Southern Pacific Railroad, main line	1001	1042
275. Report of Railroad Commissioners dated August 3, 1875, on 6th section of Southern Pacific Railroad, Main Line; Letter Dated Aug. 21, 1875, B. R. Cowen, Acting Secretary, to the President of the United States, and all Endorsements, Including Approval by the President of the United States	1003	1044
Report of the Commissioners	1003	1045
Letter of the Secretary	1012	1054
Approval by the President	1013	1056
277. Letter of Instructions Dated February 24, 1876, Z. Chandler, Secretary of the Interior, to the Commissioners Appointed to Examine the 7th Section of the Southern Pacific Railroad, Main Line	1015	1057
278. Report of Railroad Commissioners Dated May 27, 1876, on 7th Section of Southern Pacific Railroad, Main Line; Letter Dated June 14, 1876, Z. Chandler, Secretary, to the President of the United States, and all Endorsements, Including Approval by the President of the United States	1018	1060
Report of the Commissioners	1018	1060
Letter of the Secretary	1029	1074
Approval by the President	1030	1075
280. Telegram of Instructions Dated December 28, 1876, Z. Chandler, Secretary of the Interior, to the Commissioners Appointed to Examine		

	Original.	Print.
the 8th Section of the Southern Pacific Railroad, Main Line	1032	1076
281. Report of Railroad Commissioners, Dated January 2, 1877, on 8th Section of Southern Pacific Railroad, Main Line; Letter Dated Jan. 22, 1877, Z. Chandler, Secretary, to the President of the United States; and all Endorsements, Including Approval by the President of the United States	1034	1078
Report of the Commissioners	1034	1079
Letter of the Secretary	1043	1088
Approval by the President	1044	1090
283. Telegram of Instructions Dated January 19, 1877, Chas. T. Gorham, Acting Secretary of the Interior, to the Commissioners Appointed to Examine the 9th Section of the Southern Pacific Railroad, Main Line	1046	1091
284. Report of Railroad Commissioners Dated February 9, 1877, on 9th Section of Southern Pacific Railroad, Main Line; Letter Dated Feb. 20, 1877, Chas. T. Gorham, Acting Secretary, to the President of the United States, and all Endorsements, Including Approval by the President of the United States	1048	1093
Report of the Commissioners	1048	1094
Letter of the Secretary	1057	1105
Approval by the President	1058	1106
286. Letter of Instructions Dated January 28, 1878, C. Schurz, Secretary of the Interior, to the Commissioners Appointed to Examine the 10th Section of the Southern Pacific Railroad, Main Line	1060	1107
287. Report of Railroad Commissioners Dated January 30, 1878, on 10th Section of Southern		

Original. Print.

Pacific Railroad, Main Line; Letter Dated Feb. 11, 1878, C. Schurz, Secretary, to the President of the United States; and all Endorsements, Including Approval by the President of the United States 1062 1109

Report of the Commissioners 1062 1110

Letter of the Secretary 1079 1128

Approval by the President 1080 1129

289. Letter of Instructions Dated December 10, 1884, M. L. Joslyn, Acting Secretary of the Interior, to the Commissioners Appointed to Examine 242.507 miles of the Southern Pacific Railroad, Main Line, from Mojave Junction to Needles 1082 1130

290. Report of Railroad Commissioners Dated December 27, 1884, on Sections 11, 12, 13, 14, 15, and 16 of the Southern Pacific Railroad, Main Line, from Mojave Junction to Needles 1085 1133

291. Map of definite location and construction 11th section of the Southern Pacific Railroad, main line 1110 1158A

297. Appointment of George W. Bird, as Commissioner to Examine the 17th Section of the Southern Pacific Railroad, Main Line, Dated February 28, 1889 .....1111 1157

298. Appointment of Allan E. Morrison, as Commissioner to Examine the 17th Section of the Southern Pacific Railroad, Main Line, Dated February 28, 1889 .....1114 1160

299. Appointment of Orlando O. Stealey, as Commissioner to Examine the 17th Section of the Southern Pacific Railroad, Main Line, Dated February 28, 1889 .....1117 1163

300. Report of Railroad Commissioners Dated April 2, 1889, on the 17th Section of the Southern Pacific Railroad, Main Line; Letter Dated October 23, 1889, John W. Noble, Secretary, to the President of the United States; and all En-

	Original.	Print.
dorsements, Including Approval by the President of the United States	1120	1166
Report of the Commissioners	1120	1166
Letter of the Secretary	1131	1178
Approval by the President	1134	1181
311. Letter Dated April 21, 1871, Willis Drummond, Commissioner, to Register and Receiver, Visalia, California	895	926
312. Letter Dated April 21, 1871, Willis Drummond, Commissioner, to Register and Receiver, Los Angeles, California	897	927
313. Letter of Instructions Dated February 17, 1874, C. Delano, Secretary of the Interior, to the Commissioners, Appointed to Examine the Southern Pacific Railroad, Branch Line, Commencing at or near Fernando	1142	1189
314. Letter of Instructions Dated October 1, 1875, B. R. Cowen, Acting Secretary of the Interior, to the Commissioners Appointed to Examine the Southern Pacific Railroad, Branch Line, Commencing at a Point in the Northeast one-quarter of Section 24, Township 1 South, Range 9 West, San Bernardino Meridian	1145	1192
315. Telegram of Instructions Dated June 17, 1876, Z. Chandler, Secretary of the Interior, to the Commissioners Appointed to Examine the Southern Pacific Railroad, Branch Line, Fifty Additional Miles	1148	1195
316. Letter of Instructions Dated February 6, 1877, Z. Chandler, Secretary of the Interior, to the Commissioners Appointed to Examine the Southern Pacific Railroad, Branch Line, Commencing at or near Fernando	1150	1197
317. Appointment Dated Oct. 27, 1877, of Commissioners to Examine and Report upon the Southern Pacific Railroad	1153	1200

	Original.	Print.
318. Letter of Instructions Dated October 27, 1877, C. Schurz, Secretary of the Interior, to the Commissioners Appointed to Examine the Southern Pacific Railroad	1156	1203
319. Letter Dated Sept. 17, 1874, S. S. Burdett, Commissioner General Land Office, to Register and Receiver, Los Angeles, and Map of Southern Pacific Railroad, Branch Line	1160	1207
Certificate	1160	1207
Letter of Commissioner	1162	1208
Map	1163	1210
320. Letter Dated Dec. 20, 1875, S. S. Burdett, Commissioner of the General Land Office, to Register and Receiver, Los Angeles, and Map of 2nd Section Southern Pacific Railroad, Branch Line	1164	1211
Certificate	1164	1211
Letter of Commissioner	1166	1212
Map	1168	1214
321. Letter Dated August 19, 1876, U. J. Baxter, Commissioner of the General Land Office, to Register and Receiver, Los Angeles; and Map of Third Section Southern Pacific Railroad, Branch Line	1169	1215
Certificate	1169	1216
Letter of Commissioner	1171	1216
Map	1173	1219
322. Letter Dated March 27, 1877, J. A. Williamson, Commissioner of the General Land Office, to Register and Receiver, Los Angeles; and Map of 4th Section, Southern Pacific Railroad, Branch Line	1174	1221
Certificate	1174	1222
Letter of Commissioner	1176	1222
Map	1178	1224A

	Original.	Print.
324. Page 409, Printed Report of the Commissioner of the General Land Office, for the year 1875	1179	1224
326. Abstract Showing Condition March 26, 1896, of Lands Patented to and Sold by the Southern Pacific Railroad Company Involved in this Suit, with Supplement Dated April 18, 1896	2560	2539
327. Form of Contract for Deed, Unpatented Lands, Southern Pacific Railroad Company, Party of the First Part	2570	2549
328. Form of Contract for Deed, Southern Pacific Railroad Company, Party of the First Part	2577	2556
329. Patent No. 26, Dated December 22, 1894, The United States of America, to the Southern Pacific Railroad Company, of California, Primary Limits, Main Line	2582	2563
330. Patent No. 27, Dated November 28, 1894, The United States of America, to the Southern Pacific Railroad Company of California, Indemnity Limits, Branch Line	2593	2575
331. Patent No. 27, Dated July 27, 1895, The United States of America, to the Southern Pacific Railroad Company of California, Indemnity Limits, Main Line	2604	2585
332. Contract for Deed Dated June 1, 1888, Southern Pacific Railroad Company, to William Sexton, Unpatented Lands, No. 9654	2614	2595
A1. Letter Dated February 24, 1887, Henry Beard, attorney, Southern Pacific Railroad of California, to L. Q. C. Lamar, Secretary of the Interior	1259	1290
A2. Resolution of the Southern Pacific Railroad Company Accepting Terms, Conditions, and Impositions of the Act of Congress Approved March 3, 1871, on File in the Department of the Interior	1263	1292

	Original.	Print.
A3. Letter Dated November 30, 1866, Chas. N. Fox, Acting Secretary, Southern Pacific Railroad Company, to the Secretary of the Interior, Enclosing Copy of Resolution of the Board of Directors of the Southern Pacific Railroad Company, Dated November 24, 1866	1266	1295
Letter of Chas. N. Fox	1267	1295
Resolution of Directors Southern Pacific Railroad Company	1268	1296
Reference to the Annual Reports of the Secretary of the Interior for the Years 1875, 1876, 1877, and 1878	1324	1335
Reference to the Annual Reports of the Auditor of Railroad Accounts Made to the Secretary of the Interior, for the Years ending June 30, 1880, June 30, 1881, June 30, 1882, June 30, 1883, June 30, 1884, June 30, 1886, June 30, 1887, June 30, 1888, June 30, 1889, June 30, 1890, June 30, 1891, June 30, 1892	1879	1847
Exhibits in Connection with Cross-examination of Defendants' Witnesses		
M. Before Special Examiner Potter in Case No. 184, on Cross-examination; Lease Dated February 10, 1885, to Southern Pacific Railroad Company of Kentucky, by Southern Pacific Railroad Company of California, and Seven Other Companies	1535	1534
L. on Cross-examination in Case No. 184; Extracts from the minutes of the Board of Directors of the Southern Pacific Railroad Company	1788	1774
A. on Cross-examination of Jerome Madden; Form of Deed by the Southern Pacific Railroad Company, and D. O. Mills and Gerrit L. Lansing, trustees	2555	2532

	Original.	Print.
Exhibit "A" to Bill of Complaint, Lands for which Patents of the United States Have Been Issued to Defendant Southern Pacific Railroad Company	11	18
Exhibit "A" to answer, Map Showing Conflicting and Overlapping Land Grants to the Southern Pacific Railroad Company	79	88 A
Exhibit "B" to the Answer; Trust Mortgage, Southern Pacific Railroad Company to D. O. Mills and Lloyd Tevis, Trustees, Dated April 1, 1875; Resignation of Lloyd Tevis and Appointment of Gerrit L. Lansing; Acceptance, April 18, 1883.	80	90
Exhibit "C" to the Answer; Deed of Trust, Southern Pacific Railroad Company of the First Part, Southern Pacific Company of the Second Part, and Central Trust Company of New York of the Third Part, Dated August 25, 1888.....	125	138
Exhibit "A" to the Joint and Several Supplemental Answer; List of Contracts Made by the Defendant Southern Pacific Railroad Company for the Sale of Lands Involved in this Suit.....	191	206
Exhibit No. 1 to Petition of Defendants for Leave to File Supplemental Answer, An Act to Provide for the Extension of the Time Within which Suits May be Brought to Vacate and Annul Land Patents, and for Other Purposes.....	177	192
Exhibits Filed Before Special Examiner Leo Longley, Esq., on Complainant's Behalf—See Evidence for Complainants		
Exhibits Filed Before Special Examiner, Leo Longley, Esq., on Defendant's Behalf—See Evidence for Defendants		
Exhibits Filed Before Special Examiner, Stephen Potter, Esq., on Defendant's Behalf—See Evidence for Defendants		

	Original.	Print.
Exhibits Filed Before Special Examiner Stephen Potter, Ecq., on Defendant's Behalf in Case No. 184—See Evidence for Defendants, and Exhibits in Evidence from Case No. 184.....		
Exhibits Filed with Deposition De Bene Esse of William Salomon on Behalf of Defendants, Before Notary Public in New York; Circular Dated March 8, 1880, Offering Bonds of the Southern Pacific Railroad for Sale; Forming Part of DEFENDANTS' EXHIBIT NO. 98...1496	1496	1496
Exhibit on Behalf of Defendants, No. 1, Before Special Examiner, Stephen Potter, in Case No. 184, in Connection with Deposition of Jerome Madden, Appointment of Jerome Madden as Land Agent of the Southern Pacific Railroad Company; Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1502	1502	1502
Exhibit L on Cross-examination; Extracts from the Minutes of the Board of Directors of the Southern Pacific Railroad Company.....1788	1774	1774
Exhibit M, Offered in Connection with Deposition of Gerrit L. Lansing, in Case No. 184, on Cross-Examination, Before Special Examiner Stephen Potter; Lease Dated February 10, 1885, to Southern Pacific Company of Kentucky, by the Southern Pacific Railroad Company of California, and Seven Other Companies; Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1535	1534	1534
Exhibits on Behalf of Defendants, in Connection with Deposition of J. L. Willcutt, Before Special Examiner, Stephen Potter, in Case No. 184; Forming Part of DEFENDANTS' EXHIBIT, NO. 105 1622	1622	1622
Exhibits on Behalf of Defendants, in Connection with the Deposition of Charles J. Wilder, in		

	Original.	Print.
Case No. 184; Forming Part of DEFENDANTS' EXHIBIT NO. 105	1904	1873
Exhibits on Behalf of Defendants, Filed with Report of E. H. Lamme, Standing Master and Examiner in the Case of the United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants No. 184; DEFENDANTS' EXHIBIT NO. 106	1937	1902
Exhibits Introduced from Case of United States vs. Southern Pacific Railroad Company et al., Nos. 67, 68, and 69, Consolidated:		
Master's Exhibits:		
102 is PLAINTIFF'S EXHIBIT NO. 7 herein	511	532
119 is PLAINTIFF'S EXHIBIT NO. 60 herein	1208	1246
125 is PLAINTIFF'S EXHIBIT NO. 3 herein	445	456
129 is PLAINTIFF'S EXHIBIT NO. 25 herein	603	623
130 is PLAINTIFF'S EXHIBIT NO. 26 herein	606	625
132 is PLAINTIFF'S EXHIBIT NO. 27 herein	608	627
163 is PLAINTIFF'S EXHIBIT NO. 30 herein	620	640
175 is PLAINTIFF'S EXHIBIT NO. 28 herein	611	630
176 is PLAINTIFF'S EXHIBIT NO. 29 herein	617	637
179 is DEFENDANT'S EXHIBIT NOS. 2, 3, and 4 herein, page	1385	1397
186 is PLAINTIFF'S EXHIBIT NO. 16 herein	576	593

	Original.	Print.
187 is PLAINTIFF'S EXHIBIT NO. 17 herein	578	595
188 is PLAINTIFF'S EXHIBIT NO. 18 herein	580	597
189 is PLAINTIFF'S EXHIBIT NO. 19 herein	582	600
190 is PLAINTIFF'S EXHIBIT NO. 20 herein	584	602
191 is PLAINTIFF'S EXHIBIT NO. 21 herein	586	604
193 is PLAINTIFF'S EXHIBIT NO. 22 herein	588	607
194 is PLAINTIFF'S EXHIBIT NO. 23 herein	599	619
195 is PLAINTIFF'S EXHIBIT NO. 6 herein	504	526
Exhibits introduced from case of United States vs. The Southern Pacific Railroad Company et al., No. 184:		
Plaintiff's Exhibits before Examiner Lamme:		
1 is PLAINTIFF'S EXHIBIT NO. 3 herein.	445	456
2 is PLAINTIFF'S EXHIBIT NO. 6 herein.	504	526
3 is PLAINTIFF'S EXHIBIT NO. 7 herein.	511	532
12 is PLAINTIFF'S EXHIBIT NO. 16 herein	576	593
13 is PLAINTIFF'S EXHIBIT NO. 17 herein	578	595
14 is PLAINTIFF'S EXHIBIT NO. 18 herein	580	597
15 is PLAINTIFF'S EXHIBIT NO. 19 herein	582	600
16 is PLAINTIFF'S EXHIBIT NO. 20 herein	584	602
17 is PLAINTIFF'S EXHIBIT NO. 21 herein	586	604

	Original.	Print.
19 is PLAINTIFF'S EXHIBIT NO. 22 herein	588	607
20 is PLAINTIFF'S EXHIBIT NO. 23 herein	599	619
22 is PLAINTIFF'S EXHIBIT NO. 25 herein	603	623
23 is PLAINTIFF'S EXHIBIT NO. 26 herein	606	625
24 is PLAINTIFF'S EXHIBIT NO. 27 herein	608	627
26 is PLAINTIFF'S EXHIBIT NO. 60 herein	1208	1246
27 is PLAINTIFF'S EXHIBIT NO. 28 herein	611	630
28 is PLAINTIFF'S EXHIBIT NO. 29 herein	617	637
29 is PLAINTIFF'S EXHIBIT NO. 30 herein	620	640
30 is PLAINTIFF'S EXHIBIT NO. 31 herein	622	641
31 is PLAINTIFF'S EXHIBIT NO. 32 herein	624	643
35 is PLAINTIFF'S EXHIBIT NO. 36 herein	824	851
36 is PLAINTIFF'S EXHIBIT NO. 37 herein	830	858
37 is PLAINTIFF'S EXHIBIT NO. 38 herein	834	862
40 is PLAINTIFF'S EXHIBIT NO. 33 herein	689	716
42 is PLAINTIFF'S EXHIBIT NO. 35 herein	800	824
43 is PLAINTIFF'S EXHIBIT NO. 34 herein	794	818

	Original.	Print.
44 is PLAINTIFF'S EXHIBIT NO. 39 herein	838	867
45 is PLAINTIFF'S EXHIBIT NO. 40 herein	839	869
48 is PLAINTIFF'S EXHIBIT NO. 41 herein	843	873
49 is PLAINTIFF'S EXHIBIT NO. 51 herein	863	893
53 is PLAINTIFF'S EXHIBIT NO. 43 herein	849	879
54 is PLAINTIFF'S EXHIBIT NO. 42 herein	847	877
55 is PLAINTIFF'S EXHIBIT NO. 44 herein	851	881
56 is PLAINTIFF'S EXHIBIT NO. 45 herein	853	883
57 is PLAINTIFF'S EXHIBIT NO. 46 herein	855	885
59 is PLAINTIFF'S EXHIBIT NO. 50 herein	859	889
Defendants' Exhibits before Examiner Lamme:		
78 is PLAINTIFF'S EXHIBIT NO. 56 herein	1195	1235
79 is part of DEFENDANTS' EXHIBIT NO. 106 herein	1937	1902
81 is PLAINTIFF'S EXHIBIT NO. 57 herein	1198	1237
114 is part of DEFENDANTS' EXHIBIT NO. 106 herein	1942	1905
115 is part of DEFENDANTS' EXHIBIT NO. 106 herein	1963	1922
127 is part of DEFENDANTS' EXHIBIT NO. 106 herein	1985	1940

Original. Print.

Defendants' Exhibits before Examiner Potter:

1 is part of DEFENDANTS' EXHIBIT NO. 105 herein 1502 1500

29 is DEFENDANTS' EXHIBIT NO. 43 herein 1389 1401

30 is DEFENDANTS' EXHIBIT NO. 43 herein 1403 1415

31 is DEFENDANTS' EXHIBIT NO. 43 herein 1416 1428

32 is DEFENDANTS' EXHIBIT NO. 43 herein 1429 1440

33 is DEFENDANTS' EXHIBIT NO. 43 herein 1447 1458

65 is part of DEFENDANTS' EXHIBIT NO. 105 herein 1622 1622

66 is part of DEFENDANTS' EXHIBIT NO. 105 herein 1624 1623

67 is part of DEFENDANTS' EXHIBIT NO. 105 herein 1628 1626

68 is part of DEFENDANTS' EXHIBIT NO. 105 herein 1629 1627

69 is part of DEFENDANTS' EXHIBIT NO. 105 herein 1631 1628

70 is part of DEFENDANTS' EXHIBIT NO. 105 herein 1635 1632

71 is part of DEFENDANTS' EXHIBIT NO. 105 herein 1677 1665

72 is part of DEFENDANTS' EXHIBIT NO. 105 herein 1678 1666

73 is part of DEFENDANTS' EXHIBIT NO. 105 herein 1680 1667

74 is part of DEFENDANTS' EXHIBIT NO. 105 herein 1682 1668

	Original.	Print.
75 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1683	1669
76 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1685	1671
77 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1686	1672
78 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1688	1673
79 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1689	1674
80 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1690	1675
81 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1692	1676
82 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1696	1680
83 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1697	1681
84 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1698	1682
85 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1700	1684
86 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1701	1685
87 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1702	1686
90 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1703	1088
91 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1741	1725
92 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1783	1769
93 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1784	1770

	Original.	Print.
94 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1785	1771
95 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1786	1772
96 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1787	1773
120 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1904	1873
121 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1908	1881
122 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1911	1883
132 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1914	1886
133 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1918	1889
134 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1922	1892
135 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1926	1894
136 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1930	1897
137 is part of DEFENDANTS' EXHIBIT NO. 105 herein	1935	1901
Defendants' Exhibit before the Notary Public in New York, No. 1, is part of DEFENDANTS' EXHIBIT NO. 98 herein	1496	1496
Reference to annual reports of the Auditor of Railroad Accounts, is part of DEFENDANTS' EXHIBIT NO. 105 herein	1879	1847
Exhibit M, on cross-examination of Gerritt L. Lansing, before Examiner Potter, is part of DEFENDANTS' EXHIBIT NO. 105 herein.	1535	1534

	Original.	Print.
Exhibit L, on cross-examination of J. L. Willcutt, before Examiner Potter, is part of DEFENDANTS' EXHIBIT NO. 105 herein	1788	1774
Final decree	321	336
First partial report of Leo Longley, Esq., Special Examiner in Chancery	343	368
Folsom, George T., deposition of, on behalf of defendants, before Stephen Potter, Esq., Special Examiner in Chancery	2111	2081
Form of contract for deed, unpatented lands, Southern Pacific Railroad Company, party of the first part, DEFENDANTS' EXHIBIT NO. 327	2570	2549
Form of contract for deed, Southern Pacific Railroad Company, party of the first part, DEFENDANTS' EXHIBIT NO. 328	2577	2556
Form of deed by the Southern Pacific Railroad Company, and D. O. Mills and Gerrit L. Lansing, Trustees, EXHIBIT A ON CROSS-EXAMINATION of Jerome Madden	2555	2532
Gardiner, Harrison W., deposition de bene esse on behalf of Complainants, in the case of the United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., No. 184, taken before Asa P. French, Notary Public, at Boston, Mass., PLAINTIFF'S EXHIBIT NO. 64	1211	1247
Instructions, letters of, to the commissioners appointed to examine the first section of the Southern Pacific Railroad; DEFENDANTS' EXHIBIT NO. 258	917	949
Instructions, letter of, dated August 3, 1871, B. R. Cowen, Acting Secretary of the Interior, to the Commissioners appointed to examine the second section of the Southern Pacific Railroad; DEFENDANTS' EXHIBIT NO. 261	942	976

	Original.	Print.
Instructions, letter of, dated July 23, 1872, W. H. Smith, Acting Secretary of the Interior, to the Commissioners appointed to examine the third section of the Southern Pacific Railroad, main line; DEFENDANTS' EXHIBIT NO. 265....	958	993
Instructions, letter of, dated July 7, 1873, C. Delano, Secretary of the Interior, to the Commissioners appointed to examine the fourth section of the Southern Pacific Railroad, main line; DEFENDANTS' EXHIBIT NO. 268	974	1011
Instructions, letter of, dated February 17, 1874, C. Delano, Secretary of the Interior, to the Commissioners appointed to examine the Southern Pacific Railroad, branch line, commencing at or near Fernando; DEFENDANTS' EXHIBIT NO. 313 1142		1189
Instructions, letter of, dated July 2, 1874, C. Delano, Secretary of the Interior, to the Commissioners appointed to examine the fifth section of the Southern Pacific Railroad, main line; DEFENDANTS' EXHIBIT NO. 271	988	1027
Instructions, letter of, dated June 23, 1875, C. Delano, Secretary of the Interior, to the Commissioners appointed to examine the sixth section of the Southern Pacific Railroad, main line; DEFENDANTS' EXHIBIT NO. 274 1001		1042
Instructions, letter of, dated October 1, 1875, B. R. Cowen, Acting Secretary of the Interior, to the Commissioners appointed to examine the Southern Pacific Railroad, branch line, commencing at a point in the northeast one-quarter of section 24, township 1 south, range 9 west, San Bernardino meridian; DEFENDANTS' EXHIBIT NO. 314 1145		1192
Instructions, letter of, dated February 24, 1876, Z. Chandler, Secretary of the Interior, to the Com-		

Original. Print.

missioners appointed to examine the seventh section of the Southern Pacific Railroad, main line; DEFENDANTS' EXHIBIT NO. 277....1015 1057

Instructions, telegram of, dated June 17, 1876, Z. Chandler, Secretary of the Interior, to the Commissioners appointed to examine the Southern Pacific Railroad, branch line, fifty additional miles; DEFENDANTS' EXHIBIT NO. 315...1148 1195

Instructions, telegram of, dated December 28, 1876, Z. Chandler, Secretary of the Interior, to the Southern Pacific Railroad, main line; DEFENDANTS' EXHIBIT NO. 280 .....1032 1076

Instructions, telegram of, dated January 19, 1877, Chas. T. Gorham, Acting Secretary of the Interior, to the Commissioners appointed to examine the ninth section of the Southern Pacific Railroad, main line; DEFENDANTS' EXHIBIT NO. 283 ....1046 1091

Instructions, letter of, dated February 6, 1877, Z. Chandler, Secretary of the Interior, to the Commissioners appointed to examine the Southern Pacific Railroad, branch line, commencing at or near San Fernando; DEFENDANTS' EXHIBIT NO. 316 .....1150 1197

Instructions, letter of, dated October 27, 1877, C. Schurz, Secretary of the Interior, to the Commissioners appointed to examine the Southern Pacific Railroad; DEFENDANTS' EXHIBIT NO. 318 ....1156 1203

Instructions, letter of, dated January 28, 1878, C. Schurz, Secretary of the Interior, to the Commissioners appointed to examine the tenth section of the Southern Pacific Railroad, main line; DEFENDANTS' EXHIBIT NO. 286 .....1060 1107

Instructions, letter of, dated December 10, 1884, M. L. Joslyn, Acting Secretary of the Interior, to

	Original.	Print.
the Commissioners appointed to examine 242.507 miles of the Southern Pacific Railroad, main line, from Mojave Junction to Needles; DEFENDANTS' EXHIBIT NO. 289	1082	1130
Joint and several answer of the Southern Pacific Railroad, D. O. Mills and Gerrit L. Lansing, Trustees, and the Central Trust Company of New York, to the bill of complaint	48	55
Joint and several supplemental answers of the defendants Southern Pacific Railroad Company, D. O. Mills, Trustee, and the Central Trust Company of New York, to Plaintiff's bill of complaint as amended	186	202
Judgment roll in case No. 177, in United States Circuit Court for the Southern District of California, entitled, The United States of America vs. The Southern Pacific Railroad Company et al. (Plaintiff's Exhibit 40 before Examiner Lamme, in case No. 184), PLAINTIFF'S EXHIBIT NO. 33	689	716
Kellogg, Norman A. M., Mattie Moore vs., decision dated October 5, 1893, by Wm. H. Sims, First Assistant Secretary of the Interior, in the case of; PLAINTIFF'S EXHIBIT NO. 53	885	916
Lands for which patents of the United States have been issued to defendant Southern Pacific Railroad Company, Exhibit "A" to bill of complaint.	11	18
Lansing, Gerrit L., deposition of, taken on behalf of defendants, before Stephen Potter, Esq., Special Examiner, in the case of the United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 184; forming part of DEFENDANTS' EXHIBIT NO. 105	1509	1508
Laycock, Thomas F., deposition of, as a witness on behalf of complainants, in the case of the United		

Original. Print.

States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 184, before E. H. Lamme, Esq., Standing Master and Examiner in Chancery; PLAINTIFF'S EXHIBIT NO. 66 .....1221 1256

Lease, dated February 10, 1885, to Southern Pacific Company of Kentucky, by Southern Pacific Railroad Company of California, and seven other companies, Exhibit M, offered in connection with deposition of Gerrit L. Lansing, in case No. 184, on cross-examination, before Special Examiner Stephen Potter; forming part of DEFENDANTS' EXHIBIT NO. 105 .....1535 1534

Letter, dated September 28, 1866, T. G. Phelps, President Southern Pacific Railroad, to Secretary of the Interior (forming part of Master's Exhibit 179 in case Nos. 67, 68 and 69, consolidated); DEFENDANTS' EXHIBIT NO. 2....1387 1398

Letter, dated November 23, 1866, J. C. Fremont, President Atlantic and Pacific Railroad Company, to O. H. Browning, Secretary of the Interior, transmitting resolution of directors of the Atlantic and Pacific Railroad Company, accepting terms and conditions of act of Congress of July 27, 1866 (Plaintiff's Exhibit 30, before Examiner Lamme, in case No. 184); PLAINTIFF'S EXHIBIT NO. 31 ..... 622 641

Letter, dated November 30, 1866, Chas. N. Fox, Acting Secretary Southern Pacific Railroad Company, to the Secretary of the Interior, enclosing copy of resolution of the Board of Directors of the Southern Pacific Railroad Company, dated November 24, 1866; DEFENDANTS' EXHIBIT NO. A3 .....1267 1295

Letter, dated December 15, 1866, O. H. Browning, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office (Mas-

	Original.	Print.
ter's Exhibit 186, in case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 12, before Examiner Lamme, in case No. 184), PLAINTIFF'S EXHIBIT NO. 16	576	593
Letter, dated January 3, 1867, O. H. Browning, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office, enclosing copy of letter dated September 28, 1866, *F.* G. Phelps, President Southern Pacific Railroad, to Secretary of the Interior; PLAINTIFF'S EXHIBIT NO. 71	1234	1270
Letter, dated March 19, 1867, O. H. Browning, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office; PLAINTIFF'S EXHIBIT NO. 72	1237	1273
Letter, dated March 22, 1867, Jos. S. Wilson, Commissioner, to Register and Receiver, San Francisco, Cal.; forming part of DEFENDANTS' EXHIBIT NO. 256	899	929
Letter, dated March 22, 1867, Jos. S. Wilson, Commissioner, to Register and Receiver, Visalia, Cal.; forming part of DEFENDANTS' EXHIBIT NO. 256	901	931
Letter, dated March 22, 1867, Jos. S. Wilson, Commissioner, to Register and Receiver, Stockton, Cal.; forming part of DEFENDANTS' EXHIBIT NO. 256	903	933
Letter, dated July 14, 1868, O. H. Browning, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office; PLAINTIFF'S EXHIBIT NO. 73	1240	1275
Letter, dated August 5, 1868, O. H. Browning, Secretary of the Interior, to President of the Southern Pacific Railroad Company (Defendants' Exhibit 66, before Examiner Potter, in case No. 184); forming part of DEFENDANTS' EXHIBIT NO. 105	1624	1623

	Original.	Print.
Letter, dated August 20, 1868, O. H. Browning, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office; PLAINTIFF'S EXHIBIT NO. 74	1246	1281
Letter, dated September 26, 1868, W. T. Otto, Acting Secretary of the Interior, to T. G. Phelps, President Southern Pacific Railroad Company (Defendants' Exhibit 67, before Examiner Potter, in case No. 184); forming part of DEFENDANTS' EXHIBIT NO. 105	1628	1626
Letter dated October 2, 1868, W. T. Otto, Acting Secretary of the Interior, to C. P. Huntington, Attorney S. P. R. R. Co. (Defendants' Exhibit 71, before Examiner Potter, in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 105	1677	1665
Letter dated November 2, 1869, J. D. Cox, Secretary to Jos. S. Wilson, Commissioner of the General Land Office, PLAINTIFF'S EXHIBIT NO. 54	890	921
Letter dated November 11, 1869, J. D. Cox, Secretary, to Jos. S. Wilson, Commissioner of the General Land Office (Plaintiff's Exhibit No. 59, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 50	859	889
Letter dated November 11, 1869, J. D. Cox, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office; PLAINTIFF'S EXHIBIT NO. 76	1252	1285
Letter dated December 15, 1869, J. D. Cox, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office; PLAINTIFF'S EXHIBIT NO. 77	1256	1289
Letter dated February 21, 1870, J. D. Cox, Secretary of the Interior, to C. P. Huntington; PLAINTIFF'S EXHIBIT NO. 75	1249	1283

	Original.	Print.
Letter dated July 22, 1870, from J. D. Cox, Secretary, to the Commissioners appointed to examine the first section of the Southern Pacific Railroad; Forming part of DEFENDANTS' EXHIBIT NO. 258	917	949
Letter dated July 26, 1870, J. D. Cox, Secretary, to Jos. S. Wilson, Commissioner of the General Land Office, directing proper local officers to be advised that reservation of 1867, be respected; Forming part of DEFENDANTS' EXHIBIT NO. 257	913	945
Letter dated July 29, 1870, Jos. S. Wilson, Commissioner, to Register and Receiver, San Francisco, Cal., directing that reservation as indicated in Commissioner's letter of March 22, 1867, be respected; Forming part of DEFENDANTS' EXHIBIT NO. 257	913	946
Letter dated July 29, 1870, Jos. S. Wilson, Commissioner, to Register and Receiver at Visalia, California, directing that reservation as indicated in Commissioner's letter of March 22, 1867, be respected; Forming part of DEFENDANTS' EXHIBIT NO. 257	914	947
Letter dated July 29, 1870, Jos. S. Wilson, Commissioner, to Register and Receiver, Stockton, California, directing that reservation as indicated in Commissioner's letter of March 22, 1867, be respected; Forming part of DEFENDANTS' EXHIBIT NO. 257	915	947
Letter dated August 31, 1870, J. D. Cox, Secretary of the Interior, to Lloyd Tevis, President Southern Pac. R. R. Co. (Defendants' Exhibit 68, before Examiner Potter in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 105	1629	1627
Letter dated November 25, 1870, from C. Delano, Secretary, to the Commissioners appointed to		

	Original.	Print.
examine the first section of the Southern Pacific Railroad; Forming part of DEFENDANTS' EXHIBIT NO. 258	919	952
Letter dated January 18, 1871, C. Delano, Secretary, to the President of the United States; Forming part of DEFENDANTS' EXHIBIT NO. 259..	939	973
Letter dated March 22, 1871, Chas. Crocker, President Southern Pacific Railroad Co., to Secretary of the Interior, which Letter was accompanied by a map which is Exhibit 31 herein; DEFENDANTS' EXHIBIT NO. 31 A.....	1136	1183
Letter dated April 3, 1871, Walter H. Smith, Acting Secretary of the Interior, to Willis Drummond, Commissioner of the General Land Office, which letter was accompanied by a map which is Exhibit 31 herein; DEFENDANTS' EXHIBIT NO. 31 B	1139	1186
Letter, dated April 3, 1871, Walter H. Smith, Acting Secretary of the Interior, to Charles Crocker, President Southern Pacific Railroad Company (Defendants' Exhibit 65, before Examiner Potter, in case No. 184); forming part of DEFENDANTS' EXHIBIT NO. 105	1622	1622
Letter, dated April 21, 1871, Willis Drummond, Commissioner, to Register and Receiver, Los Angeles, Cal. (Master's Exhibit 132, in case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 24, before Examiner Lamme, in case 184); PLAINTIFF'S EXHIBIT NO. 27	608	627
Letter, dated April 21, 1871, Willis Drummond, Commissioner, to Register and Receiver, Visalia, California; DEFENDANTS' EXHIBIT NO. 311	895	926
Letter dated April 21, 1871, Willis Drummond, Commissioner, to Register and Receiver, Los Angeles, California; DEFENDANTS' EXHIBIT NO. 312	897	927

	Original.	Print.
Letter of instructions, dated August 3, 1871, B. R. Cowen, Acting Secretary of the Interior to the Commissioners appointed to examine the second section of the Southern Pacific Railroad; DEFENDANTS' EXHIBIT NO. 261	942	976
Letter dated October 13, 1871, C. Delano, Secretary, to the President of the United States; Forming part of DEFENDANTS' EXHIBIT NO. 262 .	952	988
Letter dated November 29, 1871, C. J. Hillyer, Attorney for the A. & P. R. R. Co., to Columbus Delano, Secretary of the Interior (Master's Exhibit 187, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 13, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 17	578	595
Letter dated December 1, 1871, B. R. Cowan, acting Secretary of the Interior to Willis Drummond, Commissioner General Land Office (Master's Exhibit 188, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 14, before Examiner Lamme, in Case No. 184), PLAINTIFF'S EXHIBIT NO. 18	580	597
Letter dated February 3, 1872, C. J. Hillyer, attorney for A. & P. R. R. Co., to Columbus Delano, Secretary of the Interior (Master's Exhibit 189, in Case Nos 67, 68 and 69, consolidated; Plaintiff's Exhibit 15, before Examiner Lamme, in Case No. 184), PLAINTIFF'S EXHIBIT NO. 19	562	580
Letter dated February 6, 1872, C. Delano, Secretary of the Interior, to Willis Drummond, Commissioner G. L. O. (Master's Exhibit 190, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 16, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 20.....	584	602
Letter dated March 8, 1872, C. J. Hillyer, attorney for A. & P. R. R. Co., to Columbus Delano, Sec-		

	Original.	Print.
retary of the Interior (Master's Exhibit 191, in Case Nos. 67, 68 and 69, Consolidated; Plaintiff's Exhibit 17, before Examiner Lamme, in Case No. 184), PLAINTIFF'S EXHIBIT NO. 21..	586	604
Letter dated April 6, 1872, Francis B. Hayes, President of the Atlantic and Pacific Railroad Company, to C. Delano, Secretary of the Interior (Defendants' Exhibit 78, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 56 1195		1235
Letter dated April 8, 1872, Francis B. Hayes, President of A. & P. R. R. Co. to Columbus Delano, Secretary of the Interior (Defendants' Exhibit 79, befo e Examiner Lamme in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 106 1937		1902
Letter dated April 10, 1872, B. R. Cowen, Acting Secretary of the Interior, to Francis B. Hayes, President of A. & P. R. R. Co. (Forming part of Master's Exhibit 194, in Case Nos. 67, 68 and 69, consolidated, and of Plaintiff's Exhibit 20, before Examiner Lamme in Case No. 184); Forming part of PLAINTIFF'S EXHIBIT NO. 23	600	620
Letter dated April 11, 1872, B. R. Cowen, Acting Secretary of the Interior, to Francis B. Hayes, President A. & P. R. R. Co. (Forming part of Master's Exhibit 194, in Case Nos. 67, 68 and 69, consolidated, and of Plaintiff's Exhibit 20, before Examiner Lamme in Case No. 184); Forming part of PLAINTIFF'S EXHIBIT NO. 23	601	621
Letter dated April 11, 1872, W. W. Curtis, Acting Commissioner of the General Land Office, to C. Delano, Secretary of the Interior (Defendants' Exhibit 81, before Examiner Lamme, in Case 184), PLAINTIFF'S EXHIBIT NO. 57 1198		1237

	Original.	Print.
Letter dated April 16, 1872, B. R. Cowen, Acting Secretary of the Interior, to Willis Drummond, Commissioner, G. L. O., enclosing copy of letter dated April 10, 1872, B. R. Cowen, Acting Secretary of the Interior, to Francis B. Hayes, President of A. & P. R. R. Co., and copy of letter dated April 11, 1872, B. R. Cowen, Acting Secretary of the Interior, to Francis B. Hayes, President, etc. (Master's Exhibit 194, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 20, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 23 ..	599	619
Letter dated April 22, 1872, Willis Drummond, Commissioner G. L. O., to Register and Receiver, Los Angeles, Cal. (Master's Exhibit 129, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 22, before Examiner Lamme, in Case 184); PLAINTIFF'S EXHIBIT NO. 25	603	623
Letter dated April 22, 1872, Willis Drummond, Commissioner, to Register and Receiver, San Francisco, Cal. (Plaintiff's Exhibit 55, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 44	851	881
Letter dated May 7, 1872, H. C. Austin, Register, to Willis Drummond, Commissioner General Land Office (Plaintiff's Exhibit 56, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 45....	853	883
Letter of instructions dated July 23, 1872, W. H. Smith, Acting Secretary of the Interior to the Commissioners appointed to examine the third section of the Southern Pacific Railroad, main line, DEFENDANTS' EXHIBIT NO. 265....	958	993
Letter dated August 15, 1872, N. L. Jeffries, attorney for A. P. R. R. Co., to the Secretary of the Interior (Master's Exhibit 119, in Case Nos. 67,		

	Original.	Print.
68 and 69, consolidated; Plaintiff's Exhibit 26, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 60	1208	1246
Letter dated September 28, 1872, B. R. Cowen, Acting Secretary, to the President of the United States; Forming part of DEFENDANTS' EXHIBIT NO. 266	971	1008
Letter and decision dated May 9, 1873, C. Delano, Secretary of the Interior, to Willis Drummond, Commissioner of the General Land Office; PLAINTIFF'S EXHIBIT NO. 78	1275	1301
Letter of instructions dated July 7, 1873, C. Delano, Secretary of the Interior, to the Commissioners appointed to examine the fourth section of the Southern Pacific Railroad, main line; DEFENDANTS' EXHIBIT NO. 268	974	1011
Letter dated August 5, 1873, B. R. Cowen, Acting Secretary, to the President of the United States; Forming part of DEFENDANTS' EXHIBIT NO. 269	985	1024
Letter of instructions dated February 17, 1874, C. Delano, Secretary of the Interior, to the Commissioners appointed to examine the Southern Pacific Railroad, branch line, commencing at or near Fernando, DEFENDANTS' EXHIBIT NO. 313	1142	1189
Letter dated April 15, 1874, C. Delano, Secretary of the Interior, to Willis Drummond, Commissioner General Land Office, enclosing copy of opinion dated March 16, 1874, W. H. Smith, Assistant Attorney General to C. Delano, Secretary of the Interior (Master's Exhibit 193, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 19, before Examiner Lamme, in Case 184); PLAINTIFF'S EXHIBIT NO. 22.....	588	607
Letter dated April 16, 1874, C. Delano, Secretary of the Interior, to Willis Drummond, Commission-		

	Original.	Print.
er G. L. O. (Master's Exhibit 130, in Case Nos. 67, 68 and 69, consolidated; Plaintiff's Exhibit 23, before Examiner Lamme, in Case 184), PLAINTIFF'S EXHIBIT NO. 26	606	625
Letter dated May 8, 1874, B. R. Cowen, Acting Secretary, to the President of the United States (Forming part of Defendants' Exhibit 29, before Examiner Potter, in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 43 ..	1401	1414
Letter of instructions dated July 2, 1874, C. Delano, Secretary of the Interior, to the Commissioner appointed to examine the fifth section of the Southern Pacific Railroad, main line; DEFENDANTS' EXHIBIT NO. 271.....	988	1027
Letter dated September 17, 1874, S. S. Burdett, Commissioner General Land Office, to Register and Receiver, Los Angeles, and map of Southern Pacific Railroad, Branch Line; DEFENDANTS' EXHIBIT NO. 319	1162	1208
Letter dated October 9, 1874, B. R. Cowen, Acting Secretary, to the President of the United States; Forming part of DEFENDANTS' EXHIBIT NO. 272	998	1039
Letter dated November 23, 1874, S. S. Burdette, Commissioner, to Register and Receiver, San Francisco, Cal. (Plaintiff's Exhibit 54, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 42	847	877
Letter dated November 23, 1874, S. S. Burdette, Commissioner, to Register and Receiver, Visalia, Cal. (Plaintiff's Exhibit 53, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 43	849	879
Letter of November 23, 1874, Commissioner of the G. L. O., to Register and Receiver at Los Angeles, Cal., transmitting map of Atlantic and Pa-		

Original. Print.

cific R. R., from Western boundary line of Los Angeles county to San Miguel Mission, Cal. (Forming part of Plaintiff's Exhibit 49, before Examiner Lamme, in Case No. 184); Forming part of PLAINTIFF'S EXHIBIT NO. 51 .... 864 894

Letter of instructions dated June 23, 1875, C. Delano, Secretary of the Interior, to the Commissioners appointed to examine the sixth section of the Southern Pacific Railroad, main line, DEFENDANTS' EXHIBIT NO. 274 .....1001 1042

Letter dated August 21, 1875, B. R. Cowen, Acting Secretary, to the President of the United States; Forming part of DEFENDANTS' EXHIBIT NO. 275 ....1012 1054

Letter of instructions dated October 1, 1875, B. R. Cowen, Acting Secretary of the Interior, to the Commissioners appointed to examine the Southern Pacific Railroad, branch line, commencing at a point in the northeast one-quarter section 24, township 1 south, range 9 west, San Bernardino Meridian, DEFENDANTS' EXHIBIT NO. 314 ....1145 1192

Letter dated November 8, 1875, Z. Chandler, Secretary of the Interior, to the President of the United States (Forming part of Defendants' Exhibit 30, before Examiner Potter, in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 44 ....1414 1426

Letter dated November 13, 1875, Z. Chandler, Secretary of the Interior, to S. S. Burdette, Commissioner General Land Office (Defendants' Exhibit 133, before Examiner Potter, in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 105 ....1918 1889

Letter dated December 20, 1875, S. S. Burdette, Commissioner of the General Land Office, to Register and Receiver, Los Angeles, and map of

Original. Print.

second section Southern Pacific Railroad, branch line, DEFENDANTS' EXHIBIT NO. 320 ....1166 1212

Letter dated January 29, 1876, L. K. Lippincott, Acting Commissioner to Register and Receiver, Los Angeles (Plaintiff's Exhibit 37, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 38 .... 834 862

Letter of instructions dated February 24, 1876, Z. Chandler, Secretary of the Interior, to the Commissioners appointed to examine the seventh section of the Southern Pacific Railroad, main line; DEFENDANTS' EXHIBIT NO. 277 ...1015 1057

Letter dated June 14, 1876, Z. Chandler, Secretary, to the President of the United States; Forming part of DEFENDANTS' EXHIBIT NO. 278..1029 1073

Letter dated July 10, 1876, Z. Chandler, Secretary, to the President of the United States (Forming part of Defendants' Exhibit 31, before Examiner Potter, in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 45 .....1427 1438

Letter dated July 22, 1876, Z. Chandler, Secretary of the Interior, to J. A. Williamson, Commissioner General Land Office (Defendants' Exhibit 134, before Examiner Potter, in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 105 ....1922 1892

Letter dated August 19, 1876, U. J. Baxter, Commissioner of the General Land Office, to Register and Receiver, Los Angeles; and map of third section, Southern Pacific Railroad, branch line, DEFENDANTS' EXHIBIT NO. 321 .....1171 1216

Letter dated September 1, 1876, Z. Chandler, Secretary of the Interior, to Chas. Crocker, President Southern Pacific R. R. Co. (Defendants' Exhibit 69, before Examiner Potter, in Case No. 184);

	Original.	Print.
Forming part of DEFENDANTS' EXHIBIT NO. 105 1631		1628
Letter dated January 22, 1877, Z. Chandler, Secretary, to the President of the United States; Forming part of DEFENDANTS' EXHIBIT NO. 281 1043		1088
Letter of instructions dated February 6, 1877, Z. Chandler, Secretary of the Interior, to the Commissioners appointed to examine the Southern Pacific Railroad, branch line, commencing at or near San Fernando; DEFENDANTS' EXHIBIT NO. 316 1150		1197
Letter dated February 20, 1877, Chas. T. Gorham, Acting Secretary, to the President of the United States; Forming part of DEFENDANTS' EXHIBIT NO. 284 1058		1105
Letter dated March 1, 1877, Chas. T. Gorham, Acting Secretary, to the President of the United States (Forming part of Defendants' Exhibit 32, before Examiner Potter, in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 46 1445		1456
Letter dated March 3, 1877, Chas. T. Gorham, Acting Secretary of the Interior, to J. A. Williamson, Commissioner General Land Office (Defendants' Exhibit 135, before Examiner Potter in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 105 1926		1894
Letter dated March 27, 1877, J. A. Williamson, Commissioner of the General Land Office, to Register and Receiver, Los Angeles; and map of fourth section, Southern Pacific Railroad, branch line; DEFENDANTS' EXHIBIT NO. 322 1176		1222
Letter dated October 18, 1877, C. Schurz, Secretary, to the Commissioner of the General Land Office (Plaintiff's Exhibit 57, before Examiner Lamme, in Case No. 184); PLAINTIFF'S EXHIBIT NO. 46 855		885

Original. Print.

Letter of instructions dated October 27, 1877, C. Schurz, Secretary of the Interior, to the Commissioners appointed to examine the Southern Pacific Railroad; DEFENDANTS' EXHIBIT NO. 318 ....1156 1203

Letter dated January 19, 1878, C. Schurz, Secretary, to the President of the United States (Forming part of Defendants' Exhibit 33, before Examiner Potter, in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 47 .....1463 1474

Letter of instructions dated January 28, 1878, C. Schurz, Secretary of the Interior, to the Commissioners appointed to examine the tenth section of the Southern Pacific Railroad, main line, DEFENDANTS' EXHIBIT NO. 286 .....1060 1107

Letter dated January 30, 1878, C. Schurz, Secretary of the Interior, to J. A. Williamson, Commissioner General Land Office (Defendants' Exhibit 136, before Examiner Potter, in Case No. 184); Forming part of DEFENDANTS' EXHIBIT NO. 105 ....1930 1897

Letter dated February 11, 1878, C. Schurz, Secretary, to the President of the United States; Forming part of DEFENDANTS' EXHIBIT NO. 287 ....1080 1128

Letter dated July 13, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, being one of thirty-seven letters introduced in connection with the deposition of J. L. Willcutt, before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming part of DEFENDANTS' EXHIBIT NO. 105..1635 1632

Letter dated July 22, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, being one of thirty-seven letters introduced in connection with the deposition of J. L. Willcutt, before Examiner Potter, in Case

Original. Print.

No. 184, as Defendants' Exhibit 70; Forming part of DEFENDANTS' EXHIBIT NO. 105..1637 1634

Letter dated July 26, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, being one of thirty-seven letters introduced in connection with the deposition of J. L. Willcutt, before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming part of DEFENDANTS' EXHIBIT NO. 105..1638 1635

Letter dated July 29, 1878, Auditor of Railroad Accounts to President of Southern Pacific Railroad Company, being one of thirty-seven letters introduced in connection with the deposition of J. L. Willcutt, before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming part of DEFENDANTS' EXHIBIT NO. 105.....1639 1635

Letter dated August 1, 1878, Auditor of Railroad Accounts to President of Southern Pacific Railroad Company, being one of thirty-seven letters introduced in connection with the deposition of J. L. Willcutt, before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming part of DEFENDANTS' EXHIBIT NO. 105..1640 1636

Letter dated August 2, 1878, C. Schurz, Secretary, to Commissioner of the General Land Office, enclosing copy of opinion of Charles Devens, Attorney General, to Carl Schurz, Secretary of the Interior, dated July 16, 1878, PLAINTIFF'S EXHIBIT NO. 52 .... 867 897

Letter dated August 27, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, being one of thirty-seven letters introduced in connection with the deposition of J. L. Willcutt, before Examiner Potter, in Case No. 184, as Defendant's Exhibit 70; Forming part of DEFENDANTS' EXHIBIT NO. 105..1641 1637

Letter dated September 3, 1878, Auditor of Railroad Accounts, to President of Southern Pacific

Original. Print.

Railroad Company, being one of thirty-seven letters introduced in connection with the deposition of J. L. Willcutt, before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming part of DEFENDANTS' EXHIBIT NO. 105 ....1642 1637

Letter dated September 9, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, being one of thirty-seven letters introduced in connection with the deposition of J. L. Willcutt, before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming part of DEFENDANTS' EXHIBIT NO. 105 ....1643 1638

Letter dated September 20, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, being one of thirty-seven letters introduced in connection with the deposition of J. L. Willcutt, before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming part of DEFENDANTS' EXHIBIT NO. 105 ....1644 1639

Letter dated September 27, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, being one of thirty-seven letters introduced in connection with the deposition of J. L. Willcutt, before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ....1645 1640

Letter Dated October 1, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of 37 Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105..1646 1641

	Original.	Print.
Letter Dated October 4, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of 37 Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in case No. 184, as Defendants' Exhibit No. 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105..	1647	1642
Letter dated October 7, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS EXHIBIT NO. 105.....	1648	1642
Letter dated October 10, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105	1649	1643
Letter Dated October 12, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105	1650	1644
Letter Dated October 15, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105	1651	1644

Original. Print.

Letter Dated October 16, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ..... 1652 1645

Letter Dated October 17, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ..... 1653 1646

Letter Dated October 19, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ..... 1654 1646

Letter Dated October 22, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ..... 1655 1647

Letter Dated October 24, 1878, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter,

Original. Print.

in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ..... 1656 1648

Letter Dated April 17, 1879, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ..... 1657 1649

Letter Dated May 17, 1879, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ..... 1658 1650

Letter Dated September 1, 1879, Auditor of Railroad Accounts, to President of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ..... 1660 1652

Letter Dated February 28, 1880, Auditor of Railroad Accounts, to Secretary of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ..... 1662 1654

Letter Dated March 18, 1880, Auditor of Railroad Accounts, to Secretary of Southern Pacific Railroad Company, Being One of Thirty-seven Let-

Original. Print.

ters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 .....1664 1655

Letter dated March 22, 1880, Auditor of Railroad Accounts, to General Accountant of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1665 1656

Letter Dated May 6, 1880, Auditor of Railroad Accounts to Secretary of Southern Pacific Railroad Company, Being One of Thirty-seven Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ....1666 1656

Letter Dated July 2, 1880, Auditor of Railroad Accounts to Secretary of Southern Pacific Railroad Company, Being one of 37 Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1667 1657

Letter Dated July 22, 1880, Auditor of Railroad Accounts to Secretary of Southern Pacific Railroad Company, Being one of 37 Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1668 1658

Letter Dated September 7, 1880, Auditor of Railroad Accounts, to Secretary of Southern Pacific

Original. Print.

Railroad Company, Being one of 37 Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105..1669 1659

Letter Dated September 18, 1880, Auditor of Railroad Accounts, to General Accountant of Southern Pacific Railroad Company, Being one of 37 Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 .....1670 1660

Letter Dated March 1, 1881, Auditor of Railroad Accounts, to General Accountant of Southern Pacific Railroad Company, being one of 37 Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105..1671 1660

Letter Dated March 19, 1881, Commissioner of Railroads, to General Accountant of Southern Pacific Railroad Company, Being one of 37 Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105 ....1672 1661

Letter Dated April 19, 1881, Commissioner of Railroads to Secretary of Southern Pacific Railroad Company, Being One of 37 Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105.1673 1662

Letter Dated May 12, 1881, Commissioner of Railroads to Secretary of Southern Pacific Railroad Company, Being One of 37 Letters Introduced

Original. Print.

in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1674 1662

Letter Dated May 12, 1881, Commissioner of Railroads to Secretary of Southern Pacific Railroad Company, Being One of 37 Letters Introduced in Connection with the Deposition of J. L. Willcutt, Before Examiner Potter, in Case No. 184, as Defendants' Exhibit 70; Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1675 1663

Letter Dated November 2, 1881, Jos. K. McCammon, Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 72 Before Examiner Potter in Case No. 184) Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1678 1666

Letter Dated February 1, 1882, Jos. K. McCammon,, Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 73 Before Examiner Potter in Case No. 184) Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1680 1667

Letter Dated May 20, 1882, W. H. Armstrong, Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 74 Before Examiner Potter in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1682 1668

Letter Dated November 9, 1882, Wm. H. Armstrong, Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 75 Before Examiner Potter in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105 .....1683 1669

Letter Dated August 11, 1883, W. H. Armstrong, Commissioner of Railroads, to J. L. Willcutt,

Original. Print.

Secretary Southern Pacific Railroad Company (Defendants' Exhibit 76 Before Examiner Potter in Case No. 184) Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1685 1671

Letter Dated April 3, 1884, F. B. Pickerill, for the Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 76 Before Examiner Potter, in Case No. 184); Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1686 1672

Letter Dated Sept. 6, 1884, Thos. J. Walker, in Charge of Office of Commissioner of Railroads, to J. L. Willcutt, Secretary of Southern Pacific Railroad Company (Defendants' Exhibit 78 Before Examiner Potter in Case No. 184) Forming Part of DEFENDANTS' EXHIBIT NO. 105 .....1688 1673

Letter of Instructions Dated December 10, 1884, M. L. Joslyn, Acting Secretary of the Interior, to the Commissioners Appointed to Examine 242.-507 Miles of the Southern Pacific Railroad, Main Line, from Mojave Junction to Needles, DEFENDANTS' EXHIBIT NO. 289 .....1082 1130

Letter Dated February 10, 1885, F. B. Pickerill, to J. *W. Wilcutt*, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 79 Before Examiner Potter, in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105 .....1689 1674

Letter Dated May 22, 1885, J. E. Johnston, Commissioner of Railroads, to J. L. *Wilcutt*, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 80 Before Examiner Potter in Case No. 184) Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1690 1675

Letter Dated December 21, 1885, J. E. Johnston, Commissioner of Railroads, to Charles Crocker,

	Original.	Print.
President Southern Pacific Railroad Company (Defendants' Exhibit 81 Before Examiner Potter in Case No. 184) Forming Part of DEFENDANTS' EXHIBIT NO. 105.....	1692	1676
Letter Dated March 23, 1886, L. Q. C. Lamar, Secretary, to the Commissioner of the General Land Office (Master's Exhibit 175 in Case Nos. 67, 68 and 69 Consolidated; Plaintiff's Exhibit 27 Before Examiner Lamme in Case No. 184), PLAINTIFF'S EXHIBIT NO. 28.....	611	630
Letter Dated April 8, 1886, Wm. A. J. Sparks, Commissioner, to Register and Receiver, Los Angeles, Cal. (Master's Exhibit 176 in Case Nos. 67, 68 and 69 Consolidated; Plaintiff's Exhibit 28 Before Examiner Lamme in Case 184), PLAINTIFF'S EXHIBIT No. 29	617	637
Letter Dated August 30, 1886, Edward Herrick, in Charge of Office of Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 82 Before Examiner Potter, in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105	1696	1680
Letter Dated Feb. 24, 1887, Henry Beard, Attorney Southern Pacific Railroad Company of California, to L. Q. C. Lamar, Secretary of the Interior, DEFENDANTS' EXHIBIT NO. A1	1259	1290
Letter Dated May 7, 1887, Edward Herrick, for the Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 83 Before Examiner Potter, in Case No. 184) Forming Part of DEFENDANTS' EXHIBIT NO. 105	1697	1681
Letter Dated May 7, 1887, Edward Herrick, for the Commissioner of Railroads, to J. L. Willcutt, Secretary Southern Pacific Railroad Company		

Original. Print.

(Defendants' Exhibit 84 Before Examiner Potter in Case No. 184) Forming Part of DEFENDANTS' EXHIBIT NO. 105 .....1698 1682

Letter Dated September 17, 1887, Edward Herrick for the Commissioner of Railroads, to J. *H.* Willcutt, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 85 Before Examiner Potter, in Case No. 184); Forming Part of DEFENDANTS' EXHIBIT NO. 105 .....1700 1684

Letter Dated April 2, 1888, Edward Herrick, for the Commissioner of Railroads, to J. *H.* Willcutt, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 86 Before Examiner Potter, in Case No. 184) Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1701 1685

Letter Dated June 4, 1889, Edward Herrick, in Charge of Office of Commissioner of Railroads, to *J. H.* Willcutt, Secretary Southern Pacific Railroad Company (Defendants' Exhibit 87 Before Examiner Potter, in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105 ....1702 1686

Letter Dated October 23, 1889, John W. Noble, Secretary, to the President of the United States, Forming Part of DEFENDANTS' EXHIBIT NO. 300 .....1131 1178

Letter Dated October 24, 1889, W. M. Thompson, in Charge of Office of Commissioner of Railroads, to G. L. Lansing, Controller, Southern Pacific Company (Defendants' Exhibit 92, Before Examiner Potter, in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105..... ....1783 1769

Letter Dated October 21, 1890, W. M. Thompson, in Charge of Office of Commissioner of Railroads, to G. L. Lansing, Secretary and Controller, Southern Pacific Railroad Company (Defend-

Original. Print.

ants' Exhibit 93, Before Examiner Potter in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1784 1770

Letter Dated October 21, 1891, W. M. Thompson, Bookkeeper, Commissioner of Railroads, to G. L. Lansing, Secretary and Controller, Southern Pacific Company (Defendants' Exhibit 94, Before Examiner Potter in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105..1785 1771

Letter Dated September 28, 1892, W. M. Thompson, Bookkeeper, Commissioner of Railroads, to G. L. Lansing, Secretary and Controller, Southern Pacific Company (Defendants' Exhibit 95, Before Examiner Potter, in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105..... .....1786 1772

Letter Dated September 16, 1893, F. E. Storm, Bookkeeper, Commissioner of Railroads, to G. L. Lansing, Secretary and Controller, Southern Pacific Company (Defendants' Exhibit 96, Before Examiner Potter, in case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105..1787 1773

Letter Dated October 4, 1893, Wm. H. Sims, Acting Secretary of the Interior, to D. A. Chambers (Defendants' Exhibit 137, Before Examiner Potter, in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105.....1935 1901

Letter of November 29, 1893, Hoke Smith, Secretary of the Interior, to the Commissioner of the General Land Office, Forming Part of PLAINTIFF'S EXHIBIT NO. 1..... 439 450

Letter of December 7, 1893, S. W. Lamoreux, Commissioner of the General Land Office, to C. P. Huntington, Enclosing List of Lands of which Reconveyance was Demanded, and Copy of Letter of November 29, 1893, from Hoke Smith, Secretary of the Interior, to the Commissioner

	Original.	Print.
of the General Land Office, PLAINTIFF'S EXHIBIT NO. 1	430	440
Letter Dated December 22, 1893, S. W. Lamoreux, Commissioner of the General Land Office, to John B. Bloss (Defendants' Exhibit 127, Before Examiner Lamme in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 106	1985	1940
Letter of January 17, 1894, S. W. Lamoreux, Commissioner of the General Land Office, to C. P. Huntington, Containing Further List of Lands of which Reconveyance was Demanded, PLAINTIFF'S EXHIBIT NO. 2	442	452
Letter Dated May 11, 1894, B. R. Cowen, Acting Secretary of the Interior, to W. W. Curtis, Acting Commissioner General Land Office (Defendants' Exhibit 132, Before Examiner Potter, in Case No. 184), Forming Part of DEFENDANTS' EXHIBIT NO. 105	1914	1886
Letters Relative to Withdrawal of Lands on Account of the Grant to the Southern Pacific Railroad Company, Attached and Filed as One Exhibit, DEFENDANTS' EXHIBIT NO. 257	906	937
Letters to the Commissioners Appointed to Examine the First Section of the Southern Pacific Railroad, DEFENDANTS' EXHIBIT NO. 258	917	949
Letter Transmitting Map of Atlantic and Pacific Railroad, from West Boundary Line of Los Angeles County to a Point in Township 7 North, Range 7 East, San Bernardino Meridian, Showing Twenty and Thirty Mile Limits (Forming Part of Plaintiff's Exhibit 48, Before Examiner Lamme, in Case No. 184), Forming Part of PLAINTIFF'S EXHIBIT NO. 4	844	874
List of Lands of which Reconveyance was Demanded, Forming Part of PLAINTIFF'S EXHIBIT NO. 1	432	443

	Original.	Print.
List, Additional, of Lands of which Reconveyance was Demanded, Forming Part of PLAINTIFF'S EXHIBIT NO. 2	443	453
List No. 42, Lands Selected by The Southern Pacific Railroad Company, Granted Limits, Main Line, DEFENDANTS' EXHIBIT NO. 187	2124	2091
List No. 77, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, Main Line, DEFENDANTS' EXHIBIT NO. 189	2139	2107
List No. 80, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, Main Line, DEFENDANTS' EXHIBIT NO. 191	2163	2131
List No. 1, Lands Selected by the Southern Pacific Railroad Company, in the Los Angeles Land District, State of California, Granted Limits, DEFENDANTS' EXHIBIT NO. 193	2178	2145
List No. 2, Lands Selected by the Southern Pacific Railroad Company, in the Los Angeles Land District, State of California, Granted Limits, DEFENDANTS' EXHIBIT NO. 195	2195	2161
List No. 4, Lands Selected by the Southern Pacific Railroad Company, in the Los Angeles Land District, State of California, Granted Limits, DEFENDANTS' EXHIBIT NO. 197	2227	2193
List No. 5, Lands Selected by the Southern Pacific Railroad Company, in the Los Angeles Land District, State of California, Granted Limits, DEFENDANTS' EXHIBIT NO. 199	2241	2207
List No. 8, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, DEFENDANTS' EXHIBIT NO. 201	2249	2214
List No. 11, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, DEFENDANTS' EXHIBIT NO. 203	2259	2223

	Original.	Print.
List No. 13, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, DEFENDANTS' EXHIBIT NO. 205	2280	2243
List No. 17, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, DEFENDANTS' EXHIBIT NO. 207	2289	2251
List No. 18, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, DEFENDANTS' EXHIBIT NO. 209	2306	2267
List No. 21, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, Branch Line, DEFENDANTS' EXHIBIT NO 211	2315	2275
List No. 28, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, DEFENDANTS' EXHIBIT NO. 213	2340	2299
List No. 30, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, DEFENDANTS' EXHIBIT NO. 215	2349	2307
List No. 33, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, DEFENDANTS' EXHIBIT NO. 217	2360	2317
List No. 34, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, DEFENDANTS' EXHIBIT NO. 219	2373	2331
List No. 63, Lands Selected by the Southern Pacific Railroad Company, Granted Limits, Branch Line, DEFENDANTS' EXHIBIT NO. 221	2384	2342
List No. 5, Lands Selected by the Southern Pacific Railroad Company, Indemnity Limits, DEFENDANTS EXHIBIT NO. 223	2395	2351
List No. 6, Lands Selected by the Southern Pacific Railroad Company, Indemnity Limits, DEFENDANTS' EXHIBIT NO. 225	2420	2380
List No. 7, Lands Selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line, DEFENDANTS' EXHIBIT NO. 227	2434	2394

	Original.	Print.
List No. 12, Lands Selected by the Southern Pacific Railroad Company, Indemnity Limits, DEFENDANTS' EXHIBIT NO. 229	2452	2414
List No. 19, Lands Selected by the Southern Pacific Railroad Company, Indemnity Limits, DEFENDANTS' EXHIBIT NO. 231	2466	2428
List No. 20, Lands Selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line, DEFENDANTS' EXHIBIT NO. 233	2481	2446
List No. 25, Lands Selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line, DEFENDANTS' EXHIBIT NO. 235	2491	2456
List No. 26, Lands Selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line, DEFENDANTS' EXHIBIT NO. 237	2518	2498
List No. 28, Lands Selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line, DEFENDANTS' EXHIBIT NO. 239	2531	2512
List No. 30, Lands Selected by the Southern Pacific Railroad Company, Indemnity Limits, Branch Line, DEFENDANTS' EXHIBIT NO. 241	2542	2522
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Madden, Jerome, Deposition of, Recalled on Behalf of Defendants, Before Special Examiner Stephen Potter	1330	1341
Madden, Jerome, Deposition of, Recalled on Behalf of Defendants, Before Special Examiner Stephen Potter	1352	1364
Madden, Jerome, Deposition of, Recalled on Behalf of Defendants, Before Special Examiner Stephen Potter	1363	1374
Madden, Jerome, Portions of the Deposition of, Taken on Behalf of Defendants, Before Stephen		

	Original.	Print.
Potter, Esq., Special Examiner, in the Case of the United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 184; Forming Part of DEFENDANTS' EXHIBIT NO. 105.....	1501	1500
Madden, Jerome, Deposition of, on Behalf of Defendants, Before Stephen Potter, Esq., Special Examiner in Chancery.....	2079	2050
Map Showing Conflicting and Overlapping Land Grants to Southern Pacific Railroad Company, Exhibit "A" to the Answer.....	79	88A
Map Showing Limits of Grant to the Atlantic and Pacific Railroad Company, in the Los Angeles Land District, with Intersecting Limits of Grant to the Southern Pacific Railroad Company (Master's Exhibit 163, in Case Nos. 67, 68 and 69 Consolidated; Plaintiff's Exhibit 29, Before Examiner Lamme in Case No. 184), PLAINTIFF'S EXHIBIT NO. 30.....	621	640
Map Showing Twenty and Thirty Mile Limits of Atlantic and Pacific Railroad Company, from Township 4 North, Range 16 West, San Bernardino Meridian, to Santa Barbara, Cal. (Plaintiff's Exhibit 44, Before Examiner Lamme in Case No. 184), PLAINTIFF'S EXHIBIT NO. 39	838	868
Map Showing General Route of Southern Pacific Railroad Company from Tehachipi Pass, by Way of Los Angeles, to the Colorado River, also Letter of Acting Secretary of the Interior, to the Commissioner of the General Land Office, of April 3, 1871 (Plaintiff's Exhibit 45, Before Examiner Lamme, in Case No. 184), PLAINTIFF'S EXHIBIT NO. 40.....	842	872
Map of Atlantic and Pacific Railroad from West Boundary Line of Los Angeles County to a Point in Township 7 North, Range 7 East, San Ber-		

	Original.	Print.
nardino Meridian, Showing Twenty and Thirty Mile Limits, also Letter Transmitting the same (Plaintiff's Exhibit 48, Before Examiner Lamme in Case No. 184), PLAINTIFF'S EXHIBIT NO. 41	846	876
Map of Atlantic and Pacific Railroad from Western Boundary Line of Los Angeles County to San Miguel Mission, Cal., also Letter of November 23, 1874, Commissioner of the General Land Office, to Register and Receiver at Los Angeles, Transmitting the same (Plaintiff's Exhibit 49, Before Examiner Lamme, in case No. 184), PLAINTIFF'S EXHIBIT NO. 51	866	896
Map of the Atlantic and Pacific Railroad Company, Showing Limits in the Los Angeles Land District, PLAINTIFF'S EXHIBIT NO. 55	893	924
Map Showing Land Grant Made by Act of Congress of July 27, 1866, to Southern Pacific Railroad Company, Forming Part of DEFENDANTS' EXHIBIT NO. 256	905	936
Map of Definite Location and Construction Eleventh Section of the Southern Pacific Railroad, Main Line, DEFENDANTS' EXHIBIT NO. 291	1110	1158A
Map of Southern Pacific Railroad, Branch Line; Forming Part of DEFENDANTS' EXHIBIT NO. 319	1163	1210
Map of Second Section of Southern Pacific Railroad, Branch Line, Forming Part of DEFENDANTS' EXHIBIT NO. 320	1168	1214
Map of Third Section of the Southern Pacific Railroad, Branch Line, Forming Part of DEFENDANTS' EXHIBIT NO. 321	1173	1219
Map of Fourth Section of the Southern Pacific Railroad, Branch Line, Forming Part of DEFENDANTS' EXHIBIT NO. 322	1178	1224A

	Original.	Print.
Maps, Abstract Copy of a Record Book of, in the Office of the Commissioner of the General Land Office, PLAINTIFF'S EXHIBIT NO. 58	1201	1239
Map (Accompanying Defendants' Exhibit No. 2), of Preliminary Survey, Under the Act of Congress of July 27, 1866, of the Southern Pacific Railroad, from San Francisco to the Colorado River (Master's Exhibit 179, in Case Nos. 67, 68 and 69 Consolidated), DEFENDANTS' EXHIBIT NO. 3	1388	1400
Map and Profile of Fourth Section of the Southern Pacific Railroad (Branch Line), from a Point in Section 3, Township 2 North, Range 15 West, Thence Northerly to a Point in Section 17, Township 11 North, Range 12 West, San Bernardino Meridian (Defendants' Exhibit 59, Before Examiner Potter in Case No. 184), DEFENDANTS' EXHIBIT NO. 47A	1467	1476A
Marshal's Return of Subpoena for Defendant Southern Pacific Railroad Company	20	29
Marshal's Return of Subpoena for Defendant D. O. Mills, trustee	22	30
Marshal's Return of Subpoena for Defendant Gerrit L. Lansing, trustee	24	32
Marshal's Return of Subpoena for Defendant Central Trust Company of New York	26	34
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	Original.	Print.
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	Original.	Print.
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	Original.	Print.
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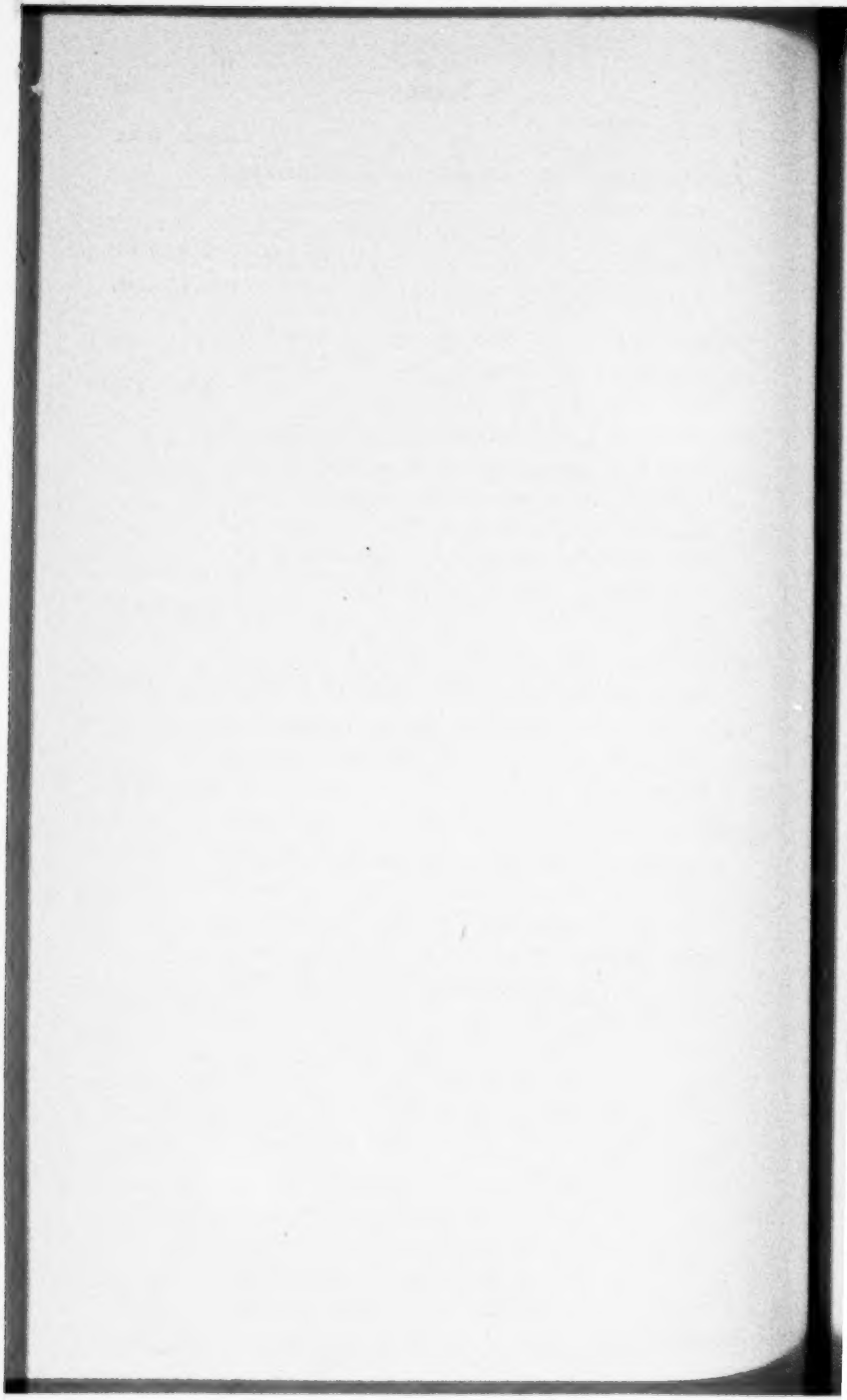

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In the United States Circuit Court of Appeals for the Ninth Circuit.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and the CENTRAL TRUST COMPANY OF NEW YORK,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellees.

Order Extending Time to Docket Cause.

An appeal having been allowed on the eleventh day of June, 1898, by the Circuit Court of the United States for the Southern District of California, to the Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, from a final decree on the sixth day of June, 1898, filed and entered of record in said Circuit Court, and on the eleventh day of June, 1898, I, ERSKINE M. ROSS, United States Circuit Judge for the Ninth Circuit, having signed the citation in said cause, which citation was made returnable on the ninth day of July, 1898, and good cause now having been shown why the time should be enlarged

for docketing said cause and filing the record thereof with the Clerk of said Circuit Court of Appeals for the Ninth Circuit, on motion on behalf of Wm. Singer, Jr., Esq., attorney for said appellants, and pursuant to the authority vested in me by subdivision one (1) of rule sixteen (16) of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit,

It is ordered that the time heretofore allowed said appellant to docket said cause and file the record thereof with the Clerk of said United States Circuit Court of Appeals for the Ninth Circuit, be and the same hereby is enlarged and extended until and including the first day of October, 1898.

Dated at Los Angeles, California, July 2, 1898.

ERSKINE M. ROSS,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 494. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Co. et al. vs. The United States of America. Order extending time to docket cause.

Filed Nov. 25, 1898. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and the CENTRAL TRUST COMPANY OF NEW YORK,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellees.

Order Extending Time to Docket Cause

An appeal having been allowed on the eleventh day of June, 1898, by the Circuit Court of the United States for the Southern District of California, to the Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, from a final decree on the sixth day of June, 1898, filed and entered of record in said Circuit Court, and on the eleventh day of June, 1898, I, ERSKINE M. ROSS, United States Circuit Judge for the Ninth Circuit, having signed the citation in said cause, which citation was made returnable on the ninth day of July, 1898, and the time allowed said appellants to docket said cause and file the record thereof with the Clerk of said United States Circuit Court of Appeals for the Ninth Circuit, having been before its expiration, viz., on the second day of July, 1898, duly enlarged and extended until and including the first day of October, 1898, and good cause

now having been shown why the time should be further enlarged for docketing said cause and filing the record thereof with the Clerk of said United States Circuit Court of Appeals for the Ninth Circuit, on motion on behalf of appellants, and pursuant to the authority vested in me by subdivision one (1) of rule sixteen (16) of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit,

It is ordered that the time heretofore allowed said appellants to docket said cause and file the record thereof with the Clerk of said United States Circuit Court of Appeals for the Ninth Circuit be and the same hereby is further enlarged and extended until and including the first day of December, 1898.

Dated at San Francisco, California, September 22, 1898.

ERSKINE M. ROSS,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 494. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Co. et al. vs. The United States of America. Order extending time to docket cause.

Filed Nov. 25, 1898. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, Ninth Circuit.

SOUTHERN PACIFIC RAILROAD CO., et al.,
Appellants,
vs.
UNITED STATES,
Appellee.
No. 494.

Stipulation Waiving Printing of Original Exhibits.

It is stipulated that the original documents from the Circuit Court, filed in this Court in pursuance of subdivision 4 of Rule 14 of this Court, and subdivision 4 of Rule 8 of the Supreme Court, and in accordance with a stipulation of the parties to this cause, on file herein, shall not be printed in this Court or in the Supreme Court, unless ordered by the Court to be printed; but shall remain as a part of the record, subject to consideration as such; said original documents being described as follows, towit:

Plaintiff's Exhibit 13, being maps of sections of Atlantic & Pacific Railroad.

Plaintiff's Exhibit 14, being map of another section of Atlantic & Pacific Railroad.

Plaintiff's Exhibit 15, being map of another section of Atlantic & Pacific Railroad.

Defendant's Exhibits 260, 263, 267, 270, 273, 276, 279, 282, 285, 288, 291, 292, 293, 294, 295, 296, and 301, being

maps of sections of constructed Southern Pacific Railroad.

Defendant's Exhibits 302, 303, 304, 305, 306, 307, 308, 309 and 310, being Southern Pacific withdrawal maps.

Defendant's Exhibit 323, being map of section Southern Pacific withdrawal.

JOSEPH H. CALL,
Special United States attorney.

WM. SINGER, Jr.,
Attorney for appellants.

[Endorsed]: No. 494. United States Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al. vs. United States. Stipulation waiving printing of Original Exhibits.

Filed December 1, 1898. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY et al., Appellants,
vs.
UNITED STATES, Appellee.
No. 494.

Stipulation as to Printing Original Exhibits, etc. (Maps).

It is stipulated, (1) that Defendant's Exhibit 291, being map of eleventh section of Southern Pacific Railroad,

from Mojave easterly, and "Defendants' Exhibit 47A," being a map of fourth section of Southern Pacific Railroad, from Mojave southerly, shall be printed for use upon appeal in this Court, and in the Supreme Court if appealed thereto, as follows, towit: those parts of each of said maps containing all endorsements, certificates, affidavits and filings, shall be printed, together with not less than three feet of each of said maps showing the line of railroad and profile thereof, and the remaining parts of said maps need not be printed.

(2) That Defendants Exhibits 47B, 47C, 47D, 47E, being maps of the first, second, third and fifth sections of Southern Pacific Railroad Company, sent up as original documents, subject to the inspection of this Court, and of the Supreme Court, if appealed thereto, shall not be printed, unless otherwise directed by the Court, or by either party prior to submission; but said original documents, together with Defendants' Exhibits Nos. 47A and 291, heretofore referred to, shall remain a part of the record on appeal in this Court, and in the Supreme Court, if appealed thereto.

(3) That in the cross-appeal in this case of United States vs. Southern Pacific Railroad Company et al., No. 495 on the docket of this Court, it shall not be necessary to print any parts of the record, which by stipulation

herein are not to be printed; and original documents herein shall be subject to inspection, upon such cross appeal.

JOSEPH H. CALL,
Special attorney for United States.

WM. SINGER, Jr.,
Attorney for S. P. R. R. Co. et al.

[Endorsed]: No. 494. United States Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al v. United States. Stipulation as to printing original exhibits etc. (maps). Filed December 19, 1898. F. D. Monckton, Clerk. By Meridith Sawyer, Deputy Clerk. Wm. Singer, Jr., rooms 61-2, Union Trust building, San Francisco, Cal., attorney for ————.

Citation.

UNITED STATES OF AMERICA.

To the United States of America, Greeting:

The Southern Pacific Railroad Company, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York, having on this day been allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree entered on June ——, 1898, in case No. 600 in the Circuit Court of the United States for the Southern District of California, brought by you against them; and their bond on such appeal having been this day approved and filed:

You are hereby cited and admonished to be and appear before the said United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, on July 9, 1898, then and there to show cause, if any there be, why the said decree should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand, on June 11, 1898.

ROSS,
Circuit Judge.

The foregoing citation was duly served on me this eleventh day of June, 1898.

JOSEPH H. HALL,
Special assistant United States attorney.

[Endorsed]: No. ——. United States Circuit Court of Appeals, Ninth Circuit. United States of America vs. Southern Pacific Railroad Co. et al. Citation. Wm. Singer, Jr., rooms 61-2, Union Trust Building, San Francisco, Cal., Att'y for Defendants.

Filed June 11, 1898. Wm. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and the CENTRAL TRUST COMPANY OF NEW YORK,
Defendants.

Bill of Complaint

To the Judges of the Circuit Court of the United States, for the Southern District of California:

The United States of America, by the attorney-general thereof, and George J. Denis, United States attorney, and Joseph H. Call, special assistant United States attorney, bring this, their bill of complaint against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California, D. O. Mills and Gerrit L. Lansing, trustees, each a resident and citizen of the State of California, residing at San Francisco in said State, the Central Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York:

I.

And thereupon your orators allege that since the year 1846 the United States have been, and still are, the absolute owners by title in fee simple, and in the possession of, the lands described in plaintiffs' exhibit "A," hereto annexed and made a part hereof.

II.

Your orators further show: That by the act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic & Pacific Railroad Company and granted to said company, to aid in the construction of said railroad, a large amount of lands in the State of California and other States and Territories, and to the whole of which said act your orators refer. (See United States Statutes, Vol. 14, p. 292.)

Your orators further show that by section 18 of said act, Congress authorized the Southern Pacific Railroad Company, a corporation claiming to be organized under the laws of the State of California, to connect with said Atlantic & Pacific Railroad, and to aid in its construction, and upon the condition that it would make such connection, agreed to make to said Southern Pacific Railroad Company a grant of lands upon the same terms, conditions and limitations as were granted to the said Atlantic & Pacific Railroad Company.

III.

Your orators further show unto the Court, and allege that by the act of Congress approved March 3, 1871, en-

titled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes" (see U. S. Stats., Vol. 16, pp. 573-9), Congress incorporated and created the Texas Pacific Railroad Company and granted to said company, to aid in the construction of said railroad a large amount of land in the State of California, and other states and territories, and to the whole of which said act your orators refer.

Your orators further show that said Atlantic & Pacific Railroad Company duly accepted said grant, and the terms and conditons of said act, *of July 27, 1866,* within the time therein required, and did designate upon plats or maps the whole of its line of route under said act, definitely locating the same from Springfield, Missouri, by way of the points and places named in said act, in the time and manner provided in said act, to the Pacific Ocean at San Buenaventura, in the State of California, and did file such plats or maps designating said line of route in the office of the commissioner of the general land office within the time and in the manner provided in said act, definitely establishing the whole thereof.

That said company filed maps of definite location designating that part of its said line in the State of California in said office of the commissioner of the general land office in the year 1872, and as said plats or maps were so filed in the interior department they were each then approved by the secretary of the interior, and upon the filing of such maps or plats as aforesaid the United States withdrew from market and reserved all the odd numbered sections of land in California within thirty (30)

*Opposite matter between stars appears the following: "Amended Dec. 24, 1894. Wm. M. Van Dyke, Clerk."

miles of said line of route, including the lands hereinafter described, and in pursuance of orders of the secretary of the interior and commissioner of the general land office, said withdrawal and reservation of said lands was made then of record in the general land office and United States district land offices in California by proper plats, diagrams and maps, to all of which your orators refer.

Your orators further show to the Court that by section 23 of said act of Congress, approved March 3, 1871, it was provided as follows: "That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California), to construct a line of railroad from a point at or near Tehachipa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions, as were granted to the said Southern Pacific Railroad Company of California by the act of July 27, 1866, provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company, or any other railroad company."

IV.

Your orators allege that said Atlantic & Pacific Railroad Company did not, within the time or manner required by said act of Congress of July 27, 1866, nor at all, construct or complete any railroad or telegraph line, in whole or in part, within the State of California, and that

by the act of Congress of July 6, 1886 (24 Stats., p. 123), all lands and rights to lands granted to and conferred upon said Atlantic & Pacific Railroad Company, and situated within the State of California, were forfeited and resumed to the United States, and said lands were restored to the public domain, including all the odd numbered sections of land for thirty (30) miles on each side of said line of route of said Atlantic & Pacific Railroad Company definitely fixed as aforesaid, between the eastern boundary of California and the Pacific Ocean at San Buenaventura, which lands are still owned by your orators.

Your orators further show unto the court and allege that all the lands above described were granted by Congress to said Atlantic & Pacific Railroad Company by said act of Congress making said grant to said company, and from the date of said grant to said company as aforesaid until said lands and rights to lands were forfeited as aforesaid, said company claimed to own said lands, and had a prospective as well as present right to said lands; and during all of that time said lands were reserved by the United States for the benefit of said Atlantic & Pacific Railroad Company.

V.

Your orators are informed and believe that the defendants herein claim that a line of railroad and telegraph from Tehachipa Pass, by way of Los Angeles, to the Colorado river, has been constructed by the Southern Pacific Railroad Company within the time and in the manner provided by said act of Congress of March 3, 1871,

above referred to, and that said company did accept said grant and the terms and conditions thereof, and did, in the year 1874, designate its line by a plat thereof filed in the office of the commissioner of the general land office, and the defendants claim that the lands herein described were granted to said company by said act, and defendants further claim that commissioners appointed by the President of the United States have reported that said railroad was constructed in all respects in compliance with said act; but your orators allege that all of said claims and pretenses are false and unfounded; and your orators show that said Southern Pacific Railroad Company named in said act of Congress of March 3, 1871, has not located or constructed any railroad or telegraph line, or any portion thereof, between the points named in section 23 of said act of March 3, 1871, within the time or manner provided by said act, or at all, nor filed any plat in the land office, nor has any connection ever been made with said Texas Pacific Railroad at or near the Colorado river, or at any other point.

VI.

And your orators further allege that none of said lands were granted to said Southern Pacific Railroad Company or any of the other defendants by said act of March 3, 1871, and that said lands were not of the category or of the character of lands described in said act of March 3, 1871, to be granted to the company therein named; but, on the contrary, they were lands reserved and otherwise claimed, and are still owned, by the United States.

VII.

Your orators further allege that on March 3, 1871, the Southern Pacific Railroad Company, named in said act of Congress of that date, was not authorized by its charter to construct or operate the line of railroad from Tehachipa Pass, by way of Los Angeles, to the Colorado river, and thereafter and before any part of any railroad or telegraph line was located or plat definitely fixing the line filed in the interior department, or any railroad constructed between the points named in said section 23 of said act of March 3, 1871, and before said grant took effect, and on August 12, 1873, said Southern Pacific Railroad Company did, without any authority from the United States or from the Congress of the United States, enter into certain articles of incorporation and consolidation with the Southern Pacific Branch Railroad Company, a corporation, thereby creating a new corporation and taking new powers under such new charter from the State of California, and thereby surrendering to the United States all the grants, rights, franchises and privileges theretofore conferred upon the first said Southern Pacific Railroad Company.

VIII.

And your orators further allege that in the year 1874, and before any part of the railroad between the points named in said section 23 of said act of Congress of March 3, 1871, had been constructed or completed, and before said grant took effect, said Southern Pacific Railroad Company created by said articles of incorporation and consolidation, on August 12, 1873, consolidated with

other railroad companies, corporations, creating another and new corporation without any authority from the United States, and taking its new charter from the State of California, and thereby surrendering to the United States all the franchises, grants, rights and privileges, if any then remained, which had been conferred by the Congress of the United States under said act of Congress of March 3, 1871.

IX.

Your orators further show and allege that the officers of the interior department have erroneously and without any authority of law caused to be issued to defendant Southern Pacific Railroad Company patents of the United States, in due form of law, for the tracts of land described in plaintiffs' exhibit "A," hereto attached and made a part hereof. That more than ninety days prior to the commencement of this suit the secretary of the interior demanded in writing of said Southern Pacific Railroad Company a relinquishment and reconveyance of said lands to the United States, which demand was refused and not complied with by said company.

X.

Your orators further allege that the defendants herein, and each of them, claim some interest in the said lands under and by virtue of the said act of March 3, 1871, and not otherwise. The nature and extent of such claims are unknown to your orators, but your orators allege that such claims are not based upon any legal or equitable right to such lands or any thereof.

Your orators further show that said adverse claims of said defendants hinder and embarrass your orators, and prevent the department of the interior from selling and otherwise disposing of said lands under the laws of the United States.

XI.

Your orators further allege that defendants herein, while claiming and pretending to own some interest in said lands, are now unlawfully removing from said lands wood, timber, minerals and other valuable deposits, and unlawfully threatening to chop down other trees on said lands and remove other minerals and valuable deposits thereon, and unless enjoined will do so, to the great and irreparable injury of your orators.

XII.

Your orators further allege that the amount in controversy in this suit, exclusive of interest and costs, exceeds the sum or value of five thousand (5,000) dollars.

In tender consideration whereof, and forasmuch as your orators are remediless at and by the strict rules of the common law, and can only be relieved in a court of equity, your orators pray that their title to said lands described in said exhibit "A" hereto annexed may be quieted; that said pretended patents be vacated and decreed to be void, and that the defendants and each of them be forever enjoined from asserting or claiming any right, or title, to said lands adverse to your orators, and that the defendants be forever enjoined from chopping down or carrying away any wood, trees or timber upon said land,

and from removing any minerals or other valuable deposits thereon.

Your orators further pray that the Court will define and determine the rights of your orators to the odd numbered sections of land in California within the thirty mile limits of the said line of route of said Atlantic & Pacific Railroad Company, as shown by the maps of said Atlantic & Pacific Railroad Company on file and of record in the general land office, and will decree that the United States are the owners in fee of said lands, as against all rights and claims of the defendants based upon or through said grants made by the United States by said acts of Congress, approved July 27, 1866, and March 3, 1871, except the lands embraced in pending suits of your orators, against said Southern Pacific Railroad Company, described as follows:

"All of the sections of land designated by odd numbers in townships three (3) and four (4) north, ranges five (5), six (6), and seven (7) west; township one (1) north, ranges sixteen (16), seventeen (17), and eighteen (18) west; townships six (6) and south three-fourths of township seven (7) north, ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16) seventeen (17), eighteen (18) and nineteen (19) west; also townships from number two (2) north to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both numbers included, San Bernardino base and meridian, California," as to which lands no relief is sought by this bill.

Your orators pray for such other and further relief as to the Court may seem equitable, and for costs of this suit, and your orators will ever pray.

May it please your honors to grant unto your orators a writ of subpoena issuing out of and under the seal of this honorable Court, to be directed to the above-named defendants, the Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, the Central Trust Company of New York, and to each of the other defendants above-named, commanding them on a certain day, and under a certain penalty therein to be inserted, to be and appear before your Honors, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and to good conscience, and your orators will ever pray.

Your orators expressly waive answer under oath by the defendants and each of them.

RICHARD OLNEY,
Attorney-general.
JOSEPH H. CALL,
Special Assistant United States attorney.
GEORGE J. DENIS
United States Attorney.

PLAINTIFFS' EXHIBIT "A."
(To Bill of Complaint.)

East one-half of the southwest one-quarter, section 13, township 1 north, range 11 west.

Lots 1, 2 and 3, east one-half of the northeast one-quarter, northwest one-quarter of the northwest one-quarter, west one-half of the northwest one-quarter, east

one-half of the southeast one-quarter, northwest one-quarter of the southeast one-quarter and the northwest one-quarter of the southwest one-quarter, section 15, township 1 north, range 11 west.

Lots 3 and 4, north one-half of the southeast one-quarter, south one-half of the northeast one-quarter and the southeast one-quarter of the northwest one-quarter, section 17, township 1 north, range 11 west.

Lots 1 and 2 of the northeast one-quarter, lots 3, 4, and 5 of the northwest one-quarter and the northeast one-quarter of the southeast one-quarter, section 3 township 1 north, range 12 west.

Lots 1 to 9 inclusive, section 5, township 1 north, range 12 west.

Lots 1 to 5 inclusive, section 11, township 1 north, range 12 west.

Lots 1, 2 and 4, section 13, township 1 north, range 12 west.

All of section 3, township 1 north, range 14 west.

Lots 1 and 2, section 5, township 1 north, range 14 west.

All of section 9, township 1 north, range 14 west.

Northwest one-quarter, section 3, township 3 north, range 19 west.

All of section 15, township 4 north, range 19 west.

East one-half of northeast one-quarter and the east one-half of the southeast one-quarter, section 17, township 4 north, range 19 west.

All of section 21, township 4 north, range 19 west.

East one-half of the northeast one-quarter and the

northeast one-quarter of the southeast one-quarter, section 29, township 4 north, range 19 west.

Southeast one-quarter of the northeast one-quarter, section 33, township 4 north, range 19 west.

Northwest one-quarter of the northwest one-quarter, section 13, township 1 north, range 11 west.

West one-half of the northeast one-quarter, southeast one-quarter of the northwest one-quarter and the northeast one-quarter of the southwest one-quarter, section 15, township 1 north, range 11 west.

Lot 1 and the southeast one-quarter of the northeast one-quarter, section 5, township 3 north, range 19 west.

West one-half, section 23, township 4 north, range 19 west.

North one-half, section 27, township 4 north, range 19 west.

Lot 2 of the southwest one-quarter, east one-half of the southwest one-quarter and the southeast one-quarter, section 7, township 1 north, range 11 west.

All of section 1, township 7 north, range 15 west.

North one-half, section 3, township 7 north, range 15 west.

East one-half of the northwest one-quarter and north one-half of the northeast one-quarter, section 5, township 5 north, range 15 west.

North one-half, section 13, township 5 north, range 15 west.

Southeast one-quarter, section 19, township 1 north, range 8 west.

Lots 1, 3 and 4, northwest one-quarter of the northeast

one-quarter and the southwest one-quarter of the northwest one-quarter, section 23, township 1 north, range 11 west.

Lot 1, section 1, township 1 south, range 11 west.

Northeast one-quarter, east one-half of the northwest one-quarter, lots 1, 2, 3, 4, 5, and 6 and north one-half of the southwest one-quarter, section 13, township 1 south, range 11 west.

Lots 1 and 5, section 3, township 1 south, range 12 west.

Northeast one-quarter of the southwest one-quarter, section 7, township 1 south, range 12 west.

Southeast one-quarter of the northwest one-quarter, northeast one-quarter of the southwest one-quarter and lot 2, section 11, township 1 south, range 12 west.

Northeast one-quarter, section 15, township 1 south, range 12 west.

Northeast one-quarter and east one-half of the southeast one-quarter, section 17, township 1 south, range 12 west.

North one-half of the southeast one-quarter, section 19, township 1 south, range 12 west.

East one-half of the northeast one-quarter, east one-half of the southeast one-quarter and northwest one-quarter, section 31, township 1 south, range 12 west.

East one-half of the southeast one-quarter and lots 1 and 2, section 3, township 1 south, range 14 west.

North one-half of the southeast one-quarter, southwest one-quarter of the southeast one-quarter and lot 3, section 7, township 1 south, range 14 west.

Southeast one-quarter and the northwest one-quarter

of the northwest one-quarter, section 11, township 1 south, range 14 west.

Lots 1, 2, 3, and 4, section 23, township 1 south, range 14 west.

Southwest one-quarter, section 13, township 2 south, range 14 west.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, east one-half of the southeast one-quarter and south one-half of the southwest one-quarter, section 17, township 2 south, range 14 west.

Northwest one-quarter, section 13, township 1 north, range 8 west.

South one-half, section 21, township 1 north, range 8 west.

North one-half, section 23, township 1 north, range 8 west.

Lots 1, 2 and 3, section 25, township 1 north, range 8 west.

Northeast one-quarter, section 5, township 1 south, range 6 west.

Northwest one-quarter, section 9, township 1 south, range 6 west.

All of section 21, township 1 south, range 7 west.

All of section 1, township 1 south, range 8 west.

All of section 11, township 1 south, range 8 west.

Northeast one-quarter of the northeast one-quarter, south one-half of the northeast one-quarter, southeast one-quarter, and lots 1, 2, 3 and 4, section 15, township 1 south, range 8 west.

Lots 1 and 2, section 21, township 1 south, range 8 west.

North one-half of the northeast one-quarter, section 23, township 1 south, range 8 west.

Lots 1, 2, 3 and 4, section 25, township 1 south, range 8 west.

South one-half of the southeast one-quarter and south one-half of the southwest one-quarter, section 27, township 1 south, range 8 west.

Lots 5, 6, 7, and 8, section 7, township 1 south, range 11 west.

Lots 2 and 3, section 5, township 1 south, range 12 west.

Northeast one-quarter section 7, township 1 south, range 12 west.

Northeast one-quarter of the northeast one-quarter (or lot 1) and the northwest one-quarter of the northwest one-quarter, section 11, township 1 south, range 12 west.

East one-half of the northeast one-quarter, section 13, township 1 south, range 12 west.

Lot 1 of the northwest one-quarter, section 19, township 1 south, range 12 west.

Northwest one-quarter, northwest one-quarter of the southwest one-quarter and east one-half, section 29, township 1 south, range 12 west.

Northwest one-quarter, section 25, township 1 south, range 14 west.

South one-half of the northeast one-quarter, section 11, township 2 south, range 14 west.

Lot 1 of northwest one-quarter, section 7, township 1 south, range 11 west.

Lots 3 and 4 of the southwest one-quarter, section 7, township 1 south, range 12 west.

Northeast one-quarter of the northeast one-quarter, south one-half of the northeast one-quarter, northwest one-quarter of the northwest one-quarter, south one-half of the northwest one-quarter and the south one-half, section 23, township 1 north, range 6 west.

All of section 25, township 1 north, range 6 west.

All of section 27, township 1 north, range 6 west.

All of section 29, township 1 north, range 6 west.

All of section 31, township 1 north, range 6 west.

All of section 35, township 1 north, range 6 west.

Lots 1, 2, 3, and 4, section 21, township 1 north, range 7 west.

East one-half of the northeast one-quarter, east one-half of the southeast one-quarter lots 1, 2, 3, and 4, section 27, township 1 north, range 7 west.

East one-half of the northeast one-quarter, northwest one-quarter of the northeast one-quarter, southeast one-quarter of the southeast one-quarter, and lots 1, 2, 3, and 4, section 35, township 1 north, range 7 west.

West one-half of the southwest one-quarter, section 13, township 1 north, range 8 west.

South one-half of the southeast one-quarter, south one-half of the southwest one-quarter, and lots 1, 2, 3, and 4, section 31, township 1 north, range 14 west.

South one-half of the southeast one-quarter, south one-half of the southwest one-quarter, and lots 1, 2, 3, and 4, section 33, township 1 north, range 14 west.

East one-half, section 35, township 1 north, range 14 west.

South one-half of the northeast one-quarter, southwest one-quarter of the northwest one-quarter, and lots 3, 4, 5, 7, and 10, section 3, township 1 south, range 14 west.

All of section 5, township 1 south, range 14 west.

North one-half, section 7, township 1 south, range 14 west.

Lots 1, 2, and 3, south one-half of the northeast one-quarter, southeast one-quarter of the northwest one-quarter, and the south one-half, section 1, township 1 south, range 15 west.

Northeast one-quarter, south one-half of the northwest one-quarter, and the south one-half, section 11, township 1 south, range 15 west.

All of section 27, township 1 south, range 5 west.

West one-half of the southwest one-quarter, section 9, township 1 south, range 6 west.

West one-half, section 11, township 1 south, range 6 west.

South one-half, section 13, township 1 south, range 6 west.

All of section 15, township 1 south, range 6 west.

East one-half of the northeast one-quarter, section 17, township 1 south, range 16, west.

Lots 1, 2, and northeast one-quarter of the southwest one-quarter, section 13, township 1 south, range 4 west.

South one-half of the southwest one-quarter, section 15, township 1 north, range 9 west.

South one-half of the southeast one-quarter, section 19, township 1 north, range 9 west.

Northwest one-quarter of the northeast one-quarter, and south one-half, section 21, township 1 north, range 9 west.

Southwest one-quarter of the southwest one-quarter, section 15, township 1 north, range 10 west.

West one-half of the northeast one-quarter, north one-half of the southeast one-quarter, and lots 5, 6, section 19, township 1 north, range 10 west.

Northeast one-quarter of the southwest one-quarter, northeast one-quarter of the northeast one-quarter, and lots 3 and 4, section 21, township 1 north, range 10 west.

Southwest one-quarter of the northeast one-quarter, west one-half of the southeast one-quarter, and the west one-half, section 11, township 1 north, range 4 west.

North one-half of the northeast one-quarter, section 25, township 1 north, range 10 west.

Lots 5, 6, and 7, section 33, township 1 south, range 9 west.

Lots 1, 2, 3, and 4, and the south one-half of the southwest one-quarter, section 35, township 1 south, range 9 west.

West one-half of the northwest one-quarter, section 5, township 7 north, range 15 west.

Lots 1, 2, 3, and 4, and the west one-half of the northwest one-quarter, section 11, township 1 north, range 14 west.

Lot 1, section 15, township 1 north, range 14 west.

Lots 1, 2, 3, and 4, section 27, township 1 north, range 14 west.

North one-half, section 7, township 7 north, range 13 west.

North one-half, section 9, township 7 north, range 14 west.

North one-half, section 11, township 7 north, range 14 west.

Lot 1, section 11, township 1 south, range 13 west.

Northeast one-quarter of the northeast one-quarter, southeast one-quarter of the southeast one-quarter, lot 1 of the northeast one-quarter, and lot 4 of the southeast one-quarter, section 13, township 1 south, range 13 west.

Lot 1, section 3, township 2 south, range 11 west.

Northeast one-quarter of the southeast one-quarter, and the south one-half of the southeast one-quarter, section 9, township 2 south, range 11 west.

Lots 1 and 2, section 3, township 2 south, range 13 west.

Lot 1, section 5, township 2 south, range 13 west.

Lots 3 and 4 of the southeast one-quarter, section 25, township 1 south, range 13 west.

All of section 1, township 7 north, range 14 west.

All of section 3, township 7 north, range 14 west.

All of section 5, township 7 north, range 14 west.

San Bernardino base and meridian, State of California.

[Endorsed]: No. 600. In United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co. Bill. Filed May 14, 1894. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Assistant United States Attorney.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

Subpœna ad Respondendum to Southern Pacific R. R. Co.

The President of the United States of America, Greeting: To the Southern Pacific Railroad Company.

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the court room in Los Angeles, on the second day of July, A. D. 1894, to answer a bill of complaint exhibited against you in said Court by the United States of America, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this fourteenth day of May, in the year of our Lord one thousand eight hundred and ninety-four, and of our Independence the one hundred and eighteenth.

WM. M. VAN DYKE,

[Seal of Court.] Clerk.

Memorandum pursuant to Rule 12, Supreme Court, U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of July, next, at the clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

WM. M. VAN DYKE,

Clerk.

United States Marshal's Office,
Southern District of California.

I hereby certify, that I received the within writ on the fourteenth day of May, 1894, and have been unable to find the said Southern Pacific Railway Co. in this district before the return day of this writ.

N. A. COVARRUBIAS,
United States Marshal.
By F. B. Goodrich,
Deputy.

Los Angeles, July 2, 1894.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. In Equity. The United States of America vs. The Southern Pacific Railroad Company, et al. Subpoena. Filed July 28, 1894. Wm. M. Van Dyke, Clerk, by E. H. Owen, Deputy.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

Subpoena ad Respondendum to D. O. Mills, Trustee.

The President of the United States of America, Greeting:

To D. O. Mills, Trustee:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at

the courtroom in Los Angeles, on the second day of July, A. D. 1894, to answer a bill of complaint exhibited against you in said Court by the United States of America, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this fourteenth day of May, in the year of our Lord one thousand eight hundred and ninety-four, and of our Independence the one hundred and eighteenth.

WM. M. VAN DYKE,

[Seal of Court.] Clerk.

Memorandum Pursuant to Rule 12, Supreme Court, U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of July next, at the clerk's office of said Court, pursuant to said bill; otherwise the said bill wil be taken pro confesso.

WM. M. VAN DYKE,

Clerk.

Southern District of California. }
United States Marshal's Office, }

I hereby certify, that I received the within writ on the fourteenth day of May, 1894, and have been unable to find the said D. O. Mills, Trustee, in *189* this district before the return day of this writ.

N. A. COVARRUBIAS,

United States Marshal.

By F. B. Goodrich,

Deputy.

Los Angeles, July 2, 1894.

[Endorsed]: Original. No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. In Equity. The United States of America vs. The Southern Pacific Railroad Company, et al. Subpoena. Filed July 28, 1894. Wm. M. Van Dyke, Clerk, by E. H. Owen, Deputy.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

Subpoena ad Respondendum to G. L. Lansing, Trustee.

The President of the United States of America, Greeting: To Gerrit L. Lansing, Trustee,

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles, on the second day of July, A. D. 1894, to answer a bill of complaint exhibited against you in said Court by The United States of America, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this fourteenth day of May, in the year of our Lord one thousand eight hundred and ninety-four, and of our Independence the one hundred and eighteenth.

WM. M. VAN DYKE,

[Seal of Court.] Clerk.

Memorandum Pursuant to Rule 12, Supreme Court, U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of July next, at the clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

WM. M. VAN DYKE,
Clerk.

United States Marshal's Office,
Southern District of California.

I hereby certify, that I received the within writ on the fourteenth day of May, 1894, and have been unable to find the said Gerrit L. Lansing in this district before the return day of this writ.

N. A. COVARRUBIAS,
United States Marshal.
By F. B. Goodrich,
Deputy.

Los Angeles, July 2, 1894.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. In equity. The United States of America vs. The Southern Pacific Railroad Company et al. Subpoena. Filed July 28, 1894. Wm. M. Van Dyke, Clerk, by E. H. Owen, Deputy.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

Subpoena ad Respondendum to Central Trust Company.

The President of the United States of America, Greeting: To the Central Trust Company of New York.

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles, on the second day of July, A. D. 1894, to answer a bill of complaint exhibited against you in said Court by the United States of America, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this fourteenth day of May, in the year of our Lord one thousand eight hundred and ninety-four, and of our Independence the one hundred and eighteenth.

WM. M. VAN DYKE,

[Seal of Court.] Clerk.

Memorandum Pursuant to Rule 12, Supreme Court, U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday in July next, at the clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

WM. M. VAN DYKE,

Clerk.

United States Marshal's Office,
Southern District of California.

I hereby certify, that I received the within writ on the fourteenth day of May, 1894, and have been unable to find the said Central Trust Co. of New York in this district before the return day of this writ.

N. A. COVARRUBIAS,
United States Marshal.
By F. B. Goodrich,
Deputy.

Los Angeles, July 2, 1894.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. In Equity. The United States of America vs. The Southern Pacific Railroad Company et al. Subpoena. Filed July 28, 1894. Wm. M. Van Dyke, Clerk, by E. H. Owen, Deputy.

At a stated term, towit, the January term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the City of Los Angeles on Monday the twenty-first day of May, in the year of our Lord one thousand eight hundred and ninety-four. Present: The Honorable ERSKINE M. ROSS, District Judge.

THE [illegible]TED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
} No. 600.

Order Granting Leave to File Amendment to Bill.

On motion of Joseph H. Call, Esq., special assistant United States attorney for the Southern District of California, of counsel for complainants, and good cause appearing therefor, it is ordered that complainants have leave to file herein their amendment to their bill of complaint.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court May 21, 1894, in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al.," No. 600, and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this sixth day of June, A. D. 1898.

WM. M. VAN DYKE,
Clerk.

[Seal of Court.]

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad

Company et al. Certified copy order granting complainants leave to file amendment to bill. Filed June 6, 1898. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Plaintiffs,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and the CENTRAL TRUST COMPANY OF NEW YORK, Defendants. } No. 600.

Amendment to Bill.

The United States, by leave of Court first obtained, files the following amendment to their bill of complaint in the above-entitled cause, to be inserted in their prayer for relief at the end of page 11 of said bill of complaint, said amendment being as follows, towit:

"Your orators further pray that their rights and title to said lands in California embraced within the sections of land designated by odd numbers within the thirty-mile limit of the line of located route of said Atlantic & Pacific Railroad Company, as shown by the said maps filed by said company and on file in the general land office, and on both sides of such line (except those lands

embraced in pending suits against said Southern Pacific Railroad Company and others above described), may be quieted and that the defendants be perpetually enjoined from having or claiming any right, title or interest in or to said lands from, through or under said acts of Congress, approved July 27, 1866, or March 3, 1871, or joint resolution of Congress, approved June 28, 1870 (volume 16 U. S. Statutes, page 382), or any other act of Congress named or to be named in this bill.

"Your orators waive answer under oath."

GEORGE J. DENIS,
United States Attorney.
JOSEPH H. CALL,
Special Assistant United States Attorney.

[Endorsed]: No. 600. In United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. Amendment to bill. Filed May 21, 1894. Wm. M. Van Dyke, Clerk. Joseph H. Call, special assistant United States attorney.

At a stated term, towit, the January term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles on Monday, the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and ninety-four. Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
} No. 600.

Order Requiring Absent Defendants to Appear.

It having been made to appear to the Court that this is a suit to enforce a claim to certain real estate situated within this judicial district, the Southern District of California, and to remove a cloud upon the title to such real estate, and it further appearing to the Court that D. O. Mills and Gerrit L. Lansing, trustees, and The Central Trust Company of New York, defendants in said suit, are not inhabitants of and cannot be found within this State of California, and that neither of them is an inhabitant of and neither of them can be found within this said State of California, and that said defendants will not voluntarily appear in said suit, and that it is not practicable to serve such defendants personally, nor any person or persons in possession or charge of [illegible] real estate, now, therefore, upon motion of Joseph F Call, Esq., special assistant United States attorney for the Southern District of California, of counsel for complainants, in open court,

It is ordered by the Court that the following named defendants in this suit, towit: D. O. Mills and Gerrit L. Lansing, trustees, and The Central Trust Company of New York, be required and hereby are ordered to appear in this court by the sixth day of August, 1894, and to

plead, answer or demur to the bill of complaint herein by the third day of September, 1894, and that a copy of this order, certified by the clerk, should be published in "The Daily Journal" (a newspaper printed and published in the city and county of Los Angeles, State of California), once a week for six consecutive weeks between the date of this order and the sixth day of August, 1894.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court May 28, 1894, in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al.," No. 600, and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this sixth day of June, A. D. 1898.

WM. M. VAN DYKE,

[Seal of Court.] Clerk.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Certified copy order that absent defendants appear. Filed June 6, 1898. Wm. M. Van Dyke, Clerk.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

Alias Subpoena ad Respondendum.

The President of the United States of America, Greeting:
To the Southern Pacific Railroad Company, and Gerrit L. Lansing, Trustee:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles, on the third day of September, A. D. 1894, to answer a bill of complaint exhibited against you in said Court by the United States of America, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this twenty-first day of July, in the year of our Lord one thousand eight hundred and ninety-four, and of our Independence the one hundred and nineteenth.

WM. M. VAN DYKE,

[Seal of Court] Clerk.

Memorandum Pursuant to Rule 12, Supreme Court, U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of Septem-

ber next, at the clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

WM. M. VAN DYKE,
Clerk.

United States Marshal's Office,
Northern District of California.

I hereby certify that I received the within writ on the twenty-third day of July, 1894, and personally served the same on the twenty-third day of July, 1894, on the Southern Pacific Railroad Company and Gerrit L. Lansing, trustee, by delivering to and leaving with J. L. Willcutt, secretary of said Southern Pacific Railroad Company and Gerrit L. Lansing, trustee, etc., said defendants named therein, personally, at the county of San Francisco, in said district, a certified copy thereof.

BARRY BALDWIN,
United States Marshal, Northern District of California.
By S. P. Monckton,
Deputy.

San Francisco, July 23, 1894.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. In Equity. The United States of America vs. The Southern Pacific Railroad Company et al. Alias Subpoena. Filed July 25, 1894. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Plaintiffs,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and the CENTRAL TRUST COMPANY OF NEW YORK, Defendants.

No. 600.

Plea in Abatement of Southern Pacific R. R. Co.

Now comes the Southern Pacific Railroad Company, one of the defendants named in the above-entitled cause, and appears specially in this cause for the purpose of objecting to the jurisdiction of the Court, and sets forth as a plea in abatement in this cause the following facts:

I.

The defendant, the Southern Pacific Railroad Company, by protestation, not confessing or acknowledging all or any parts of the matters or things in the said bill of complaint mentioned to be true in such manner and form as the same are therein set forth and alleged, does plead thereto and for plea says: that it is a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

That, nevertheless, while it admits that it owns a line of railway through the county where this suit is pending and through the Southern Judicial District of the Ninth Circuit, State of California, yet the said defendant is not an inhabitant of the Judicial District in which the suit is pending.

III.

That it is a corporation duly incorporated and existing as aforesaid, having its principal office, habitat and domicile in the city and county of San Francisco, State of California, and beyond and not within this judicial district, but within the Northern Judicial District of the Ninth Circuit, State of California, and is an inhabitant of the said Northern Judicial District, Ninth Circuit, State of California.

IV.

This defendant, the Southern Pacific Railroad Company, further states that the other defendants in this action are D. O. Mills and Gerrit L. Lansing, trustees, and the Central Trust Company of New York; that no one of the said other defendants is an inhabitant of the Southern Judicial District of the Ninth Circuit, State of California; but, on the contrary, the said defendant D. O. Mills is a resident, citizen and an inhabitant of the State of New York; that the said defendant Gerrit L. Lansing is a resident, citizen and an inhabitant of the Northern Judicial District of the Ninth Circuit, State of California, and that the said defendant, the Central Trust Company of New York, is a corporation organized and existing un-

der and by virtue of the laws of the State of New York, and is a resident, citizen and an inhabitant of said State of New York.

All which matters and things it avers to be true and pleads the same to the said bill and humbly craves the judgment of this honorable Court whether it ought to be compelled to make any further or other answer to the said bill, and furthermore prays this honorable Court that this defendant and the above-entitled suit against it may be dismissed for want of jurisdiction of this honorable Court in the premises, and that the defendant may go hence without day.

JOSEPH D. REDDING,

Solicitor and of counsel for the defendant, the Southern Pacific Railroad Co., 35 Chronicle building, San Francisco.

I hereby certify that the foregoing plea is in my opinion well founded in point of law.

WM. F. HERRIN,

Of counsel for defendant, the Southern Pacific Railroad Company.

San Francisco, August 31, 1894.

City and County of San Francisco,
Northern District of California,
State of California. } ss.

J. L. Willcutt, being duly sworn, deposes and says: I am one of the officers of the Southern Pacific Railroad Com-

pany, the above-named defendant, towit, the secretary thereof. The foregoing plea is true in point of fact and not interposed for delay.

J. L. WILLCUTT.

Sworn to before me this thirtieth day of August, A. D. 1894.

E. B. RYAN,

Notary public in and for San Francisco, Cal.

[Notarial seal.]

[Endorsed]: No. 600. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Railroad Co. et al. Special appearance and plea in abatement of Southern Pacific Railroad Co.

Received copy of the within this first day of September, 1894. George J. Denis, United States attorney. Jos. H. Call, special assistant United States attorney.

Filed Sept. 1, 1894. Wm. M. Van Dyke, Clerk. Joseph D. Redding, solicitor for Southern Pacific Railroad Co. 33 Chronicle building, San Francisco, Cal.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and the CENTRAL TRUST COMPANY OF NEW YORK,
Defendants.

No. 600.

Plea in Abatement of Gerrit L. Lansing

Now comes Gerrit L. Lansing, one of the defendants named in the above-entitled cause, and appears specially in this cause for the purpose of objecting to the jurisdiction of the Court, and sets forth as a plea in abatement in this case the following facts:

I, Gerrit L. Lansing, and named as Gerrit L. Lansing, trustee, in said complaint, by protestation, not confessing or acknowledging all or any part of the matters or things in the said bill of complaint mentioned to be true in such manner and form as the same are therein set forth and alleged, do plead and for plea say, that I am a resident citizen and an inhabitant of the Northern District of the State of California.

II.

That I reside in the city and county of San Francisco, State of California, and am not an inhabitant or a resi-

dent of the Judicial District in which this suit is pending.

III.

That said city and county of San Francisco, State of California, is in the Northern District, Ninth Judicial Circuit of the State of California, and beyond and not within this Judicial District.

IV.

I furthermore state that the other defendants in this cause are the Southern Pacific Railroad Company, D. O. Mills, trustee, and the Central Trust Company of New York. That no one of said other defendants is an inhabitant or a resident of the Southern Judicial District of the Ninth Circuit, State of California; on the contrary, the defendant D. O. Mills is a resident, citizen and an inhabitant of the State of New York, and the defendant, the Southern Pacific Railroad Company, is a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal offices and domicile in the city and county of San Francisco, within the Northern Judicial District, of the Ninth Circuit, State of California, and is an inhabitant of said Northern Judicial District of the Ninth Circuit, State of California.

All which matters and things I aver to be true and plead the same to the said bill and humbly pray the judgment of this honorable Court, whether I ought to be compelled to make any further or other answer to the said bill, and furthermore crave this honorable Court that I, and the above-entitled suit against me, may be dismissed

for want of jurisdiction of this honorable Court in the premises, and that I may go hence without day.

JOSEPH D. REDDING,

Solicitor and of counsel for the defendant, Gerrit L. Lansing, 35 Chronicle building, San Francisco.

I hereby certify that the foregoing plea is in my opinion well founded in law.

San Francisco, August 31, 1894.

WM. F. HERRIN,

Of counsel for defendant Gerrit L. Lansing.

City and County of San Francisco, Northern District of California, State of California. } ss.

Gerrit L. Lansing, being duly sworn, deposes and says: I am one of the above-named defendants. The foregoing plea is true in point of fact and not interposed for delay.

GERRIT L. LANSING.

Sworn to before me this thirtieth day of August, 1894.

E. B. RYAN,

Notary Public in and for San Francisco, California.

[Notarial Seal.]

[Endorsed]: No. 600. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Railroad Company et al. Special appearance and plea in abatement of G. L. Lansing.

Received copy of within this first day of September, 1894. George J. Denis, United States Attorney. Joseph H. Call, special assistant United States Attorney.

Filed September 1, 1894. Wm. M. Van Dyke, Clerk.

Joseph D. Redding, solicitor for Southern Pacific Railroad Company, 33 Chronicle building, San Francisco, California.

At a stated term, towit, the August term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles on Thursday, the eleventh day of October, in the year of our Lord one thousand eight hundred and ninety-four. Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY ET AL.,
Defendants.
No. 600.

Order Overruling Plea in Abatement of S. P. R. R. Co.

On motion of Joseph H. Call, Esq., special assistant United States Attorney for the Southern District of California, of counsel for complainants, and with the consent of Joseph D. Redding, Esq., of counsel for defendant, The Southern Pacific Railroad Company, appearing specially for the purpose of objecting to the jurisdiction of the Court, it is ordered that the plea in abatement of said defendant, The Southern Pacific Railroad Company, be

and the same is hereby set down for argument on this day, and is submitted to the Court upon briefs on file in this court in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587," and thereupon, the Court having duly considered the same, it is ordered that the said plea in abatement be and the same is hereby overruled on the grounds given in the opinion of the Court this day filed in said cause entitled "The United States of America, complainants, vc. The Southern Pacific Railroad Company et al., defendants, No. 587." It is further ordered on motion on behalf of said defendant and with the consent of counsel for complainants, that said defendant have thirty (30) days within which to serve and file its demurrer or answer to complainants' bill of complaint.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court October 11, 1894, in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., No. 600," and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this sixth day of June, A. D. 1898.

WM. H. VAN DYKE,
Clerk.

[Seal of Court.]

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Certified copy order overruling plea in abatement of defendant Southern Pacific Railroad Company. Filed June 6, 1898. Wm. M. Van Dyke, Clerk.

At a stated term, towit, the August term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles on Thursday, the eleventh day of October, in the year of our Lord, one thousand eight hundred and ninety-four. Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 600.

Order Overruling Plea in Abatement of G. L. Lansing.

On motion of Joseph H. Call, Esq., special assistant United States Attorney for the Southern District of California, of counsel for complainants, and with the consent of Joseph D. Redding, Esq., of counsel for defendant Gerrit L. Lansing, appearing specially for the purpose of

objecting to the jurisdiction of the Court, it is ordered that the plea in abatement of said defendant Gerrit L. Lansing be and the same hereby is set down for argument on this day, and is submitted to the Court upon briefs on file in this court in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587," and thereupon, the Court having duly considered the same it is ordered that the said plea in abatement be and the same is hereby overruled on the grounds given in the opinion of the Court this day filed in said cause, entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587." It is further ordered on motion on behalf of said defendant, and with the consent of counsel for complainants, that said defendant have thirty (30) days within which to serve and file its demurrer or answer to complainants' bill of complaint.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court October 11, 1894, in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., No. 600," and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this sixth day of June, A. D. 1898.

WM. M. VAN DYKE

[Seal of Court.] Clerk.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Certified copy order overruling plea in abatement of defendant Gerrit L. Lansing. Filed June 6, 1898. Wm. M. Van Dyke, Clerk.

At a stated term, towit, the August term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles on Monday, the twenty-fourth day of December, in the year of our Lord one thousand eight hundred and ninety-four. Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA, Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants.

No. 600.

Order Amending Bill of Complaint.

On motion of Joseph H. Call, Esq., special assistant United States Attorney, of counsel for complainants, and with the consent of defendants' counsel, it is ordered that complainants' bill of complaint be amended by inserting after the word "act" and before the word "within," in line fifteen (15) of page three (3) thereof, the words "of July 27, 1866."

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court December 24, 1894, in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and remaining of record therein.

Attest my hand and the seal of said Circuit Court this sixth day of June, A. D. 1898.

WM. M. VAN DYKE,

[Seal of Court.] Clerk.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company, et al. Certified copy order amending bill of complaint. Filed June 6, 1898. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND GERRIT L. LANSING, TRUSTEES, AND THE CENTRAL TRUST COMPANY OF NEW YORK,
Defendants.
No. 600.

Answer to Bill of Complaint.

The joint and several answer of the Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, and the Central Trust Company of New York, to the bill of complaint of the United States, plaintiff.

These defendants respectively, now and at all times saving to themselves all and all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto, or to so much thereof as these defendants are advised that it is material or necessary for them to make answer to, severally answering, say:

I.

The defendants deny that since the year 1846, the United States have been and still are the absolute owners

by title in fee simple, or by any title whatsoever, or in anywise or at all, or as alleged in the said bill of complaint, or have been or still are in the possession of the land described in plaintiff's "Exhibit A" annexed to the complaint and made a part thereof.

On the contrary, defendants allege that from the year 1846, continuously and until July 27, 1866, the plaintiff was the owner in fee simple absolute, in possession, and entitled to the possession of all the lands described in "Exhibit A" annexed to the plaintiff's bill of complaint; that on the said last mentioned date the Congress of the United States granted a portion of said lands to the defendant, the Southern Pacific Railroad Company as is hereinafter, with a description of the portion of said land so granted, particularly set forth; that as to said portion of said lands hereinafter described and particularly set forth, the defendants deny that the plaintiff is, or at any time since July 27, 1866, has been the owner in fee simple absolute or otherwise, or in any manner or at all, or in possession or entitled to the possession thereof.

The defendants allege that from the year 1846 continuously and until March 3, 1871, the plaintiff was the owner in fee simple absolute, and in possession and entitled to the possession of all the lands described in "Exhibit A" other than such thereof as were granted to the defendant, the Southern Pacific Railroad Company on July 26, 1866, as aforesaid; that on March 3, 1871, the Congress of the United States granted all the lands described in the said "Exhibit A" to the defendant, the Southern Pacific Railroad Company, which had not theretofore been granted

to the said Southern Pacific Railroad Company by the act of Congress of July 27, 1866, and the lands so granted to the said defendant, the Southern Pacific Railroad Company on March 3, 1871, are hereinafter particularly set forth and described.

Defendants deny that the plaintiff is, or at any time since March 3, 1871, has been the owner in fee simple absolute, or otherwise, or in possession or entitled to the possession of any of the lands described in plaintiff's "Exhibit A."

II.

The defendants admit that by an act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company and granted to said company to aid in the construction of said railroad a large quantity of public lands; but they aver that such grant was made and subject to the conditions and the limitations in said act mentioned, to which said act of Congress reference is hereby made (United States Statutes, Volume 14, page 292) and the defendants refer to the whole of said act of Congress.

The said defendants aver that the Southern Pacific Railroad Company, one of the defendants herein, is a corporation organized and existing under and by virtue of the laws of the State of California, as hereinafter stated, and is a resident and inhabitant of the Northern District of said State and a citizen thereof.

The defendants deny that by section 18 of the said act of Congress, the United States or Congress agreed to make a grant of lands to the said Southern Pacific Railroad Company upon the same terms, conditions and limitations as were granted to the said Atlantic and Pacific Railroad Company, or upon the condition that the Southern Pacific Company would make connection with the said Atlantic and Pacific Railroad Company. On the contrary, said defendants allege that by section 18 of said act of Congress of July 27, 1866, Congress authorized the Southern Pacific Railroad Company to connect with the said Atlantic and Pacific Railroad Company at such point, near the boundary line of the State of California, as the Southern Pacific Railroad Company should deem most suitable for a railroad line to San Francisco, and did in direct terms make a grant of lands in the State of California to the Southern Pacific Railroad Company, and subject to the conditions and limitations therein provided.

III.

Said defendants admit that by the act of Congress approved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes" (United States Statutes, Volume 16, pages 573-579), Congress incorporated the Texas Pacific Railroad Company, and granted to said company, to aid in the construction of said railroad, a large quantity of public lands; but said defendants deny that said grant ever attached to or affected any lands within the State of California, and

they aver that such grant was made subject to the conditions and limitations in the said act last mentioned, to which said act of Congress reference is hereby made, and these defendants refer to the whole of said act of Congress.

That said defendants deny that said Atlantic and Pacific Railroad Company duly or in anywise accepted said grant.

Said defendants deny that the said Atlantic and Pacific Railroad Company did within the time required, or in any manner or at all, designate upon plats or maps, the whole of its line or any part of its line of route under said act of July 25, 1866, or did definitely locate the same from Springfield, Missouri, by the way of the points and places named in the said act in the time and manner provided in said act, to the Pacific Ocean at San Buenaventura, in the State of California, or to any point on the Pacific Ocean.

Said defendants further deny that the said Atlantic and Pacific Railroad Company did file plats or maps designating said line of route in the office of the Commissioner of the general land office in the time and in the manner provided in the said act, definitely establishing the whole or any part thereof; and the said defendants further deny that said Atlantic and Pacific Railroad Company did designate or locate any of its line or route in the State of California, between any points therein, and deny that it ever located or adopted or designated any part of said line in the State of California, or in any manner provided in the said act, or at all.

Said defendants deny that said Atlantic and Pacific Railroad Company filed maps of definite location, designating part of its said line in the State of California, in the said office of the commissioner of the general land office in the year 1872, or at any time or at all; and deny that as said plats or maps were so filed in the interior department, they were each then approved by the secretary of the interior; and deny that upon the filing of such maps or plats as aforesaid, the United States withdrew from market and reserved all or any of the odd numbered sections of land in California, within thirty miles of said line of route, or including the lands hereinafter described; and deny that in pursuance of orders of the secretary of the interior, and the commissioner of the General land office, said withdrawal or reservations of said lands was made then of record in the general land office and the United States district land office in California, by proper plats, documents and maps, or in any manner or at all; the said defendants further deny that any lands in suit herein fell within the thirty-mile limits of any such line, or were ever withdrawn from market, or reserved for or for the benefit of said Atlantic and Pacific Railroad Company; and deny that the Atlantic and Pacific Railroad Company ever designated a line of railroad between the Colorado river and the Pacific Ocean by *by* a map or maps thereof filed in the office of the commissioner of the general land office, or made or filed a map or maps of definite location of route or designation of route from the Colorado river to the Pacific Ocean, whether by the most practicable and eligible route or otherwise howsoever.

Said defendants aver that the said Atlantic and Pacific Railroad Company never made any actual or general or definite or any location whatsoever of its line or route of railroad in California.

Said defendants further aver that the pretended location of a route by said Atlantic and Pacific Railroad Company in California never was or became an actual or a definite location or designation of a general route for a railroad from San Francisco to the Needles or from the Needles to the Pacific Ocean, or from the point of crossing the Colorado river selected by said Atlantic and Pacific Railroad Company, to the Pacific Ocean; and further aver that such pretended location or designation of route was a colorable and fraudulent location or designation of a route, and that such route was also upon an unauthorized and impracticable line; that the maps filed by the said Atlantic and Pacific Railroad Company in the interior department and in the office of the secretary of the interior, and in the office of the commissioner of the general land office, purporting to show a designation of route in the State of California, and embracing the lands in controversy, were fraudulent, spurious and manufactured, and deceived the officers of the government and were intended so to do.

Defendants further aver that the Atlantic and Pacific Railroad Company transmitted to the office of the secretary of the interior on March 8, 1872, four maps purporting to show the location of portions of the line of railroad of the Atlantic and Pacific Railroad Company; first, from San Francisco to San Miguel Mission, California; second,

from a point on the western boundary line of Los Angeles, California, to a point in township seven north, range seven east, of San Bernardino base and meridian, in said State; third, from the eastern boundary of Arizona, to the Colorado river, and fourth, from the western boundary of Texas to the western boundary of New Mexico. That these maps and all four of them were described upon their face and by endorsements thereon, to be maps of definite location over the territory described thereon, and named therein; that the said maps above mentioned as "third" and "fourth" are the result of actual surveys and are made and prepared to a certain extent in conformity with the rules and regulations of the interior department issued and provided for the location of lines of route of railroads receiving land grants from the United States.

Said defendants aver that the said map of the Atlantic and Pacific Railroad Company above mentioned as "first," from San Francisco to San Miguel Mission, California, and said map above mentioned as "second" from a point on the western boundary line of Los Angeles, California, to the point in township seven north, range seven east, to San Bernardino base and meridian, in said State of California, purporting to include the lands in controversy, were not and are not the result of actual surveys made for the purpose of locating the line of railroad of the Atlantic and Pacific Railroad Company in said State; but on the contrary are spurious and fraudulent, and depict an impracticable, unsurveyed and unauthorized line of proposed railroad entirely ignoring the topography of the earth's surface, and are without reference thereto,

That the said last mentioned map was on or about the eighth day of March, 1872, tendered to the secretary of the interior, by one C. J. Hillyer as attorney for the said Atlantic and Pacific Railroad Company, as a "map designating the line or route of said railroad from a point on the western boundary line of Los Angeles county in the State of California, to a point in township seven north, and range seven east of San Bernardino base and meridian in said State." That the said map or plat bears on the face thereof an affirmation by one J. Blickensderfer, Jr., purporting to be the chief engineer of the Atlantic and Pacific Railroad Company, to the effect that one E. N. Robinson, during the period since the first day of June, 1871, and previous to said first day of June, 1871, had been employed as deputy or division engineer under said Blickensderfer, and that the said deputy or division engineer as shown by his fieldnotes did actually survey and mark upon the ground the line or route of the Atlantic and Pacific Railroad from a point on the westerly boundary line of Los Angeles county, to a point in township seven north and range seven east of San Bernardino base and meridian, State of California, in the sections and at the times respectively designated by dates included between the flagstaffs upon and along the alleged line of route of said railroad, as delineated on said map, and the said map purported to show the lines of the public surveys in connection with the surveyed line of the route; that such statements, embodied in the said affirmation upon the face of said map, were made with the intent and purpose of thereby securing the accept-

ance of such map by the secretary of the interior and the commissioner of the general land office and a withdrawal of lands thereunder, but such statements were and are wholly and willfully false. That the said Robinson never did, as shown by his fieldnotes, or otherwise, survey or mark upon the ground any line or route of the Atlantic and Pacific Railroad as delineated upon said map, and the said map does not show the lines of public surveys in connection with any surveyed lineof route of said Atlantic and Pacific Railroad. That the said map or plat bears on the face thereof a certificate of one Uriel Crocker, as president, and said J. Blickensderfer, Jr., as chief engineer, of said Atlantic and Pacific Railroad Company, certifying that the said map shows the line or route of said railroad from a point on the western boundary of the county of Los Angeles, to a point in township seven north, range seven east of San Bernardino base and meridian, in the State of California, as definitely fixed in compliance with said act of Congress, and that the date of the fieldnotes thereof are truly indicated along the line from station to station upon said map. Such statements so embodied in the said certificate upon the face of said map, were made with the like intent and purposes as the statements in the affirmation aforesaid, but were also wholly and willfully false. The said map did not show any line of route which has been definitely fixed in compliance with said act of Congress, and did not truly indicate the dates of any field work of or on any such line or route.

The said map did not and does not show any practicable or eligible route for any railroad, but was and is a mere sham.

Said defendants further aver that the said four maps being so received together by the interior department upon said date, deceived the officers of the interior department, who, acting under said deception and believing said four maps to be similar in character and each and all of them to display properly and in conformity with the regulations of the interior department, the true and definite location of the proposed line of railroad of the Atlantic and Pacific Railroad Company, caused a letter to be issued from the general land office on April 22, 1872, which letter is in the words and figures, following, towit:

"Department of the Interior,

"General Land Office, April 22, 1872.

"Registrar and Receiver, Los Angeles, Cal.

"Gentlemen:

"I transmit herewith a diagram showing the definite location of the Atlantic and Pacific Railroad under act of July 27, 1866, Stat.———, Vol. 14, p. 292, from a point on the western boundary of Los Angeles county, to a point in township seven north, range seven east, on the San Bernardino in your district, showing also the twenty and thirty mile limits of the land grant under said act; and you are hereby directed to withhold from preemption or homestead entry, private sale or location, all the odd-numbered sections falling within those limits, both surveyed and unsurveyed, not reserved, sold, granted or otherwise appropriated, and free from preemption or other claims or rights at the time the line of said road was designated by filing a plat thereof in this office, which was March 12, 1872. The even-numbered sections within the

twenty-mile limit you will increase in price to $2.50 per acre and dispose of them at that ratability and only under the preemption and homestead laws. The even sections outside of the twenty-mile limits are not affected by this withdrawal. Claims initiated by settlers under the preemption laws prior to the right of the road attaching March 12, 1872, are not affected by this order.

"Be pleased to acknowledge the receipt of this letter without delay.

"Very respectfully,
"WILLIS DRUMMOND,
"Commissioner."

Said defendants aver that said maps "first" and "second," last above referred to, are not maps showing the definite location of the line of railroad of the Atlantic and Pacific Railroad Company in the State of California, or in reference to any portions thereof; that they are not maps showing the general route of said Atlantic and Pacific Railroad Company in the State of California, and were not intended so to be; that the said Atlantic and Pacific Railroad Company intended that said maps should be taken and accepted as proper and sufficient maps of the definite location of the line of railroad of the said Atlantic and Pacific Railroad Company in certain portions of the State of California, and embracing territory which includes the lands in controversy in this cause. That the said interior department accepted the four maps last above mentioned unaware of the fraud and deception being perpetrated upon it, or the officers thereof; and therefore caused the letter above quoted to be sent by

the commissioner of the general land office to the registrar and receiver at Los Angeles.

The said defendants further aver that said letter, in view of said deception and said fraud, and of the true character of the said maps "first" and "second," did not and cannot operate as an order of withdrawal of any lands in the State of California for the benefit of said Atlantic and Pacific Railroad Company. The said defendants further allege that no lands ever were withdrawn in the State of California or reserved or in anywise taken out of the public domain for the benefit of the said Atlantic and Pacific Railroad Company, or against the rights of the Southern Pacific Railroad Company, one of the defendants herein, or against the rights of the other defendants.

That no rights to or interest in any public lands were or could be acquired by said Atlantic and Pacific Railroad Company by reason of any such attempted location or designation, or any act of acceptance thereof, on the part of the interior department.

Said defendants further aver that the said Atlantic and Pacific Railroad Company transmitted on the fifteenth of August, 1872, to the interior department, two other maps, purporting to designate the line of its railroad in the county of San Bernardino, State of California: First, from a point in township seven north, range seven east, to the Colorado river, and second, from a point between the San Miguel Mission and the Los Angeles county line. That said maps are likewise spurious, fraudulent and manufactured, and do not depict or show any surveyed

route or line of road between the points named of the Atlantic and Pacific Railroad Compay in the State of California. That said maps depict a route wholly impracticable, igoring the topography of the earth's surface, and not upon a route that was ever surveyed by said Atlantic and Pacific Railroad Company in the State of California and not upon a line or route which was intended to be or could be the definite location or location of general route of the line of railroad of the Atlantic and Pacific Railroad Company; that no rights to or interest in any public lands were or could be acquired by said Atlantic and Pacific Railroad Company by reason of said maps, or attempted location or designation, or by the acceptance of any of the said maps by the interior department.

IV.

Said defendants further allege that in the year 1869, the said Atlantic & Pacific Railroad Company filed a map in the Interior Department purporting to show the definite location of its line of road in the State of California, from its point of crossing the Colorado river to the Pacific ocean, which definite line of location passes through the said State of California far to the north of the lands in controversy, and did not embrace any thereof. That from said year 1869, and down to the year 1885, said Atlantic & Pacific Railroad Company continuously reiterated its claim before the interior department that its line of definite location in the State of California was located by said map of 1869.

Said defendants deny that said Atlantic & Pacific Railroad Company was authorized by said act, or any other

act of Congress, to locate or construct a line of railroad from the point of crossing of the Colorado river to San Francisco. They are advised and believe, and therefore aver, that, under the said act of Congress, the defendant the Southern Pacific Railroad Company alone was authorized to construct a line of railroad from the point of crossing of the Colorado river to San Francisco, and to acquire lands under said act of Congress along and opposite to said line, and that the only right which the Atlantic & Pacific Railroad Company ever acquired to locate or construct any line of railroad in the State of California was the right to locate and construct a road from the crossing of the Colorado river by the most practicable and eligible route to the Pacific ocean, which route was not on the line pretended to be designated by the said Atlantic & Pacific Railroad Company.

V.

And these defendants further aver that on July 27, 1866, all the lands described in the said "Exhibit A" were vacant and unappropriated public lands, to which the United States had full title; and none of said lands had theretofore been granted, sold or otherwise disposed of, nor were any of said lands reserved, occupied by homestead settlers, or preempted, nor were any of said lands mineral lands, and all of said lands were then free from preemption or other claims or rights; and all of the said lands have ever since so remained, except as is hereinafter set forth and stated.

That by the said act of Congress, approved July 27, 1866, the defendant, the Southern Pacific Railroad Com-

pany, was authorized to connect with the Atlantic & Pacific Railroad at such point near the boundary line of the State of California, as the Southern Pacific Railroad Company should select, and construct a railroad from such point to the city of San Francisco; and to aid in the construction thereof, the said act made a grant of lands to the defendant the Southern Pacific Railroad Company to the amount of ten odd-numbered sections per mile on each side of the line of railroad which it should adopt.

That within two years after the passage of the said act, the defendant the Southern Pacific Railroad Company filed in the office of the secretary of the interior its acceptance of the terms, conditions and impositions of the said act; which acceptance was in writing, under the corporate seal of the said company, and was duly executed in pursuance of the direction of its board of directors, theretofore made.

That prior to January 3, 1867, the defendant the Southern Pacific Railroad Company duly established the general route of the entire railroad, which it was authorized by the said act to construct, and on the said date filed in the office of *its* commissioner of the general land office, a plat or map designating the said general route, and the entire line of the railroad, which map was thereupon duly accepted and approved by the commissioner of the general land office and the secretary of the interior, and on March 22, 1867, the said officers withdrew all the odd numbered sections within thirty miles of the railroad line shown upon the said plat from preemption and homestead entry, sales and other disposition by the United

States; and that all the odd numbered sections within thirty miles of the said railroad line have remained so withdrawn and reserved from preemption and homestead entry, sales and other disposition continuously since January 3, 1867, and down to the present time. That the said company commenced the construction of its said railroad within the time allowed therefor, and definitely located and constructed those portions thereof of more than twenty-five miles each, extending from San Francisco to Mojave, in ten several sections, prior to February 1, 1878, except that section of portion between Tres Pinos and Alcalde, and definitely fixed and actually constructed that portion thereof extending from Mojave to its connection with the Atlantic & Pacific Railroad at Needles, on the Colorado river, in several sections, prior to December, 1884; and all of said railroad was so completed in a good, substantial and workmanlike manner, and in all respects as required by the said act and acts amendatory thereof. That on August 7, 1871, the said company filed in the general land office and department of the interior a plat, duly showing the section of its railroad extending from the said commencement point to Gilroy, as the same had been definitely located and constructed, and at various different dates intermediate August 7, 1871, and December 1, 1884, filed similar plats showing all the other sections of its entire railroad from San Francisco to the Needles, as the same had been definitely located and constructed; each and all of which plats were accepted and approved by the commissioner of the general land office and the secretary of the interior.

That commissioners duly appointed by the President of the United States for that purpose, examined the said railroad as it was completed in sections, and prior to December 27, 1884, duly reported to the President of the United States that all of the said railroad had been completed in a good, substantial and workmanlike manner, and in all respects as required by the said act.

That at the times aforesaid and when the said Southern Pacific Railroad Company filed its said map designating the line of route of its railroad, many of the odd sections within the twenty miles of the railroad line shown thereon, were granted, sold, reserved, occupied by homestead settlers, preempted and otherwise disposed of by the United States; and the aggregate quantity of such lands, in lieu of which the said company was granted other lands by said act, was and is more than equal to the aggregate quantity of all the odd numbered sections beyond twenty miles and within thirty miles of the said railroad line; and all of the odd sections which were not otherwise disposed of on January 3, 1867, situated within thirty miles of the said railroad line, were granted to the Southern Pacific Railroad Company by the said act. And at all the times when the said railroad was definitely fixed and the plats thereof filed as aforesaid, the aggregate quantity of the odd sections within twenty miles of the definitely fixed line of railroad, which were granted, sold, reserved, occupied by homestead settlers, preempted or otherwise disposed of by the United States, and in lieu of which the said company was granted other lands, was and is more than equal to the aggregate quantity of all

the undisposed of odd sections beyond twenty miles and within thirty miles of the said definitely fixed railroad line; and all of the odd sections which were not otherwise disposed of on January 3, 1867, situated within thirty miles from the said definitely fixed railroad line, were granted to the Southern Pacific Railroad Company by the said act of Congress.

That the said company is, and for a long time prior to the commencement of this suit was entitled to have patents issued by the government of the United States to it for all the lands granted to it as aforesaid, within thirty miles on each side of its said railroad line; and prior to the commencement of this suit patents were duly issued to the said company for twelve thousand three hundred and eighteen and seventy-seven one-hundredths acres of the lands described in "Exhibit A," annexed to the plaintiff's bill of complaint.

That prior to the commencement of this suit the Southern Pacific Railroad Company duly selected in lists, under the direction of the secretary of the interior, one hundred and *fif* thousand and eighty-three and twenty-eight one-hundredths acres of the lands *mentioned in* the plaintiff's bill of complaint, lying within twenty miles of the said railroad line, and paid for costs and fees thereon, exacted and collected of it by the United States, the sum of seven thousand dollars. That no part of the said sums has been tendered or repaid to the said company by the United States.

That all the lands granted to the defendant the Southern Pacific Railroad Company by the said act of July 27,

Opposite matter in stars appears the following: "Aug. 31, 1896. Wm. V. D., Clk.

1866, are particularly described and shown by defendant's "Exhibit A," annexed to and made a part of this answer.

VI.

And these defendants further aver that on March 3, 1871, all the lands described in the "Exhibit A," annexed to the plaintiff's bill of complaint, and not granted to the Southern Pacific Railroad Company by the said act of July 27, 1866, were vacant and unappropriated public lands to which the United States had full title.

That by section 23 of the act of Congress, approved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," the defendant the Southern Pacific Railroad Company was authorized to construct a railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to a point on the Colorado river, at or near the southeastern boundary of the State of California, along such line as the said company should adopt; and to aid in the construction thereof, the said section 23 made a grant of land to the said Southern Pacific Railroad Company to the amount of ten sections per mile on each side of the line of railroad which it should adopt, not mineral in character, to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims and rights at the time the said company filed a plat in the office of the commissioner of the general land office, designating the line of its said railroad. And the said section further provided that the Southern Pacific Railroad Company should select other lands, under the direction of

the secretary of the interior, from the odd sections within ten miles beyond the limits of the said granted sections, in lieu of such of the said granted sections as were granted, sold, reserved, occupied by homestead settlers, or otherwise disposed of at the date the said plat designating the line of railroad was filed in the office of the commissioner of the general land office.

That the said section 23 did not, nor did the said land grant, defeat or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or of any other railroad company; except that the land grant made by it to the Southern Pacific Railroad Company conflicted with and overlapped the land grant made to the same company by the act approved July 27, 1866, hereinbefore set forth, as is particularly shown by "Exhibit A," annexed hereto.

That in April, 1871, the defendant the Southern Pacific Railroad Company filed in the office of the secretary of the interior its acceptance of the terms, conditions and impositions of the said act of March 3, 1871; which acceptance was in writing under the corporate seal of the company, and was duly executed in pursuance of the direction of its board of directors, theretofore made.

That prior to April 3, 1871, the said Southern Pacific Railroad Company duly established the general route of the entire railroad, which it was authorized by the said act of March 3, 1871, to construct, and on the said date filed in the office of the commissioner of the general land office, a plat or map designating the general route and line of said railroad from Tehachapi Pass, by way of Los

Angeles, to Yuma; which map was thereupon duly accepted and approved by the commissioner of the general land office and the secretary of the interior, and on April 21, 1871, the said officers withdrew all the odd numbered sections within thirty miles of the railroad line shown upon the said plat, from preemption and homestead entry, sales and other dispositions by the United States, and including that portion of the lands in controversy hereinafter described; and all of said lands which lie within thirty miles of the said railroad line, have remained so withdrawn and reserved from preemption and homestead entry, sales and other disposition continuously since April 21, 1871, and down to the present time.

That the said company commenced the construction of its said railroad in the year 1871, and prior to December 28, 1877, definitely located and constructed its entire railroad from Tehachapi Pass by way of Los Angeles to Yuma, along the line of route designated by its said plat filed April 3, 1871; and all of said railroad was so completed in a good, substantial and workmanlike manner, and in all respects as required by the said act. That the said railroad was completed in five several sections, and plats showing the line thereof as the same was definitely located and constructed, were filed in the general land office and the interior department at various different dates after the year 1871, and prior to December 28, 1877; each and all of which plats were accepted and approved by the commissioner of the general land office and the secretary of the interior.

That commissioners duly appointed by the President of the United States for that purpose, examined the said

railroad as it was completed in sections, and prior to December 28, 1877, duly reported to the President of the United States that all of the said railroad had been completed in a good, substantial and workmanlike manner, and in all respects as required by the said act.

That at all the times aforesaid when the Southern Pacific Railroad Company filed its map designating the line of route of its railroad and the said railroad was definitely fixed, many of the odd sections within twenty miles of the railroad line shown thereon, were granted, sold, reserved, occupied by homestead settlers, preempted and otherwise disposed of by the United States, and the aggregate quantity of such lands in lieu of which the said company was granted other lands as aforesaid, was and is more than equal to the aggregate quantity of all the undisposed of odd sections beyond twenty miles and within thirty miles of the said railroad line; and all of the odd sections which were not otherwise disposed of, on April 3, 1871, situated within thirty miles from the said railroad line, were granted to the Southern Pacific Railroad Company by the act of March 3, 1871.

That said company is, and for a long time prior to the commencement of this suit, was entitled to have patents issued by the government of the United States to it, for all the lands granted to it as aforesaid, within thirty miles on each side of its said railroad; and prior to the commencement of this suit patents were duly issued to the said company for thirty thousand four hundred and twenty and eight one-hundredths acres of lands described in "Exhibit A," annexed to the plaintiff's bill of complaint.

That prior to the commencement of this suit the Southern Pacific Railroad Company duly selected in lists under the direction of the secretary of the interior sixty-six thousand and eighty-one and forty-two one-hundredths acres of lands *mentioned in* the plaintiff's bill of complaint, lying within twenty miles of the said railroad line, and eighty-eight thousand nine hundred and fifty-seven and six one-hundredths acres of the lands described in the said "Exhibit A" lying within thirty miles of the said railroad line, and paid for costs and fees thereon exacted and collected of it by the United States the sum of nine thousand dollars. That no part of the said sum has been tendered or repaid the said company by the United States.

VII.

Said defendants admit that by the act of Congress approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic & Pacific Railroad Company, et cetera" (24 Stats. p. 123) all the lands and rights to lands in California theretofore granted or conferred upon said Alantic & Pacific Railroad Company were declared forfeited and restored to the public domain; but they deny that any lands in controversy were ever granted to the Atlantic & Pacific Railroad Company, or were ever forfeited or resumed, or restored to the public domain by any act of forfeiture or by said act of forfeiture. They admit and aver that no part of said Atlantic & Pacific Railroad had at the time of the passage of said act of 1886, or has at any time since, been constructed in the State of California.

Opposite matter between stars appears the following: "Aug. 31, 1896. Wm. M. V. D. Clk."

Said defendants deny that all of the lands above described, or any of them, or any of the lands in controversy herein, were granted by Congress to said Atlantic & Pacific Railroad, by said act of Congress of July 27, 1866; and they furthermore deny that from the date of said act as aforesaid, up to any period of time, or until said act of forfeiture, said Atlantic & Pacific Railroad Company claimed to own said lands or any thereof.

Said defendants deny that said Atlantic & Pacific Railroad Company had or claimed to have a prospective right or a present right or a prospective as well as a present right to said lands in controversy. Said defendants furthermore deny that during all of said times or during any of said time, or between any of the dates mentioned, said lands were reserved by the United States for the benefit of said Atlantic & Pacific Railroad Company.

VIII.

These defendants admit that they make the claims as are set forth in subdivision V of plaintiff's bill of complaint, except that the Southern Pacific Railroad Company designated the line and filed the plat therein mentioned in the year 1871 instead of 1874; but they deny that such claims in whole or in part, are a pretense, false or unfounded, and aver that said claims are in each and every particular sincere, true, well founded and valid. And these defendants deny that the Southern Pacific Railroad Company named in the act of Congress of March 3, 1871, has not located and constructed the railroad and telegraph line between the points named in section 23 of the said act, within the time and manner provided in said

act; and deny that the said company has not filed a plat in the land office, nor made a connection with the Texas Pacific Railroad at or near the Colorado river; and deny that none of the said lands were granted to said Southern Pacific Railroad Company or to any of the other defendants by said act of March 3, 1871, or that said lands are not of the category or of the character of the lands described in said act of March 3, 1871, to be granted to the company therein named; and deny that said lands were lands reserved or otherwise claimed or still owned by the United States; on the contrary, said defendants allege that the said lands were granted by said act of Congress of March 3, 1871, to the said defendant the Southern Pacific Railroad Company, and were earned by the said defendant the Southern Pacific Railroad Company, by the construction of its road within the time and manner required by law, and as hereinbefore stated.

The defendants further deny that their claim or claims to the said lands hinder or embarrass the plaintiff or prevent the department of the interior from selling or otherwise disposing of said lands, or any part thereof; on the contrary, the defendants allege that the plaintiff has no right, title or interest whatsoever in or to said lands or any part thereof; that all of the said lands were granted to and are owned by these defendants as is hereinbefore particularly set forth, and that the department of the interior has no authority or power to sell or in anywise dispose of said lands.

IX.

Answering paragraph VII of the plaintiff's complaint, the defendants deny the same and all thereof.

Furthermore, said defendants allege that on or about the second day of December, 1865, a corporation was organized under the laws of the State of California, under the corporate name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," which act is printed in the Statutes of California, 1861, p. 601, and pray to refer thereto; that said corporation was formed for the purpose and with the corporate power, as stated in the articles of incorporation, of constructing, owning and maintaining a railroad from some point on the bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Ibispo, Tulare, Los Angeles and San Diego, to the town of San Diego, in said State; thence eastward through said county of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad to the Mississippi river; and they refer to said articles of incorporation for the precise contents, purport and effect thereof.

The defendants furthermore allege that on or about the eleventh day of October, A. D. 1870, under and by virtue of the general laws of the State of California in that behalf, the said Southern Pacific Railroad Company, the San Francisco & San Jose Railroad Company, the Santa Clara & Pajaro Valley Railroad Company, corporations organized and existing under the laws of the State of California, entered into articles of consolidation and amal-

gamation, consolidating and amalgamating their capital stocks, debts, property, assets and franchises under the name of the Southern Pacific Railroad Company, in the manner provided by the laws of California, and such articles were signed, published and filed as provided by the laws of California, and they pray leave to refer to such articles of consolidation and amalgamation material to any purposes of this suit, and to the laws of California authorizing the same, and to the laws of California affecting the corporations aforesaid, or any of them, and to the amendatory articles of the Southern Pacific Railroad Company filed.

The defendants furthermore allege that on or about the twelfth day of August, 1873, under and by virtue of the laws of the State of California, on that behalf the said Southern Pacific Railroad, as it existed after the said consolidation and amalgamation of 1870 and composed of the consolidated and amalgamated companies above referred to, and the Southern Pacific Branch Railroad Company, a corporation organized and then existing under the laws of California, formed for the purpose and with the corporate powers stated in its articles of incorporation, of constructing, owning and maintaining a railroad within the State of California, did consolidate and amalgamate their capital stock, debts, property, assets and franchises under the name and style of the Southern Pacific Railroad Company, and entered into articles of consolidation and amalgamation, which said articles were duly signed, published and filed as required by the laws of California, and they pray leave to refer to such articles so far as material

to this suit, and to the laws of California authorizing the same. They aver that such consolidation and amalgamation and such articles of consolidation and amalgamation were real and not pretended; they deny that said articles of incorporation and consolidation were entered into without any authority from the United States or from the Congress of the United States; and they deny that by such articles of agreement of consolidation and amalgamation, or by any consolidation and amalgamation, a new capital stock or a new or different corporation was created, or purported to be created; but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations, and not a newly created corporation. As to the contents, purport and effect of the articles of incorporation of the consolidated companies, they pray leave to refer to the same if in anywise material to this suit; and they pray leave to refer to the laws of the State of California, as existing prior to 1873, authorizing the consolidation and amalgamation of railroad companies incorporated under the laws of the State. The defendants furthermore deny that by said articles of incorporation and amalgamation the defendant Southern Pacific Railroad Company surrendered to the United States all or any of the grants, rights, franchises or privileges theretofore conferred upon it, or upon the Southern Pacific Railroad Company as it existed prior thereto.

X.

Answering paragraph VIII of the plaintiff's complaint, the defendants deny each and all thereof, and allege that

on or about the eighteenth day of December, 1874, under and by virtue of the laws of the State of California, on that behalf, the said Southern Pacific Railroad Company, as it existed after the said consolidation and amalgamation of 1873, and composed of the consolidating and amalgamating companies above referred to, did consolidate and amalgamate its capital stock, its property and assets and franchises, under the name and style of the Southern Pacific Railroad Company, and entered into articles of consolidation and amalgamation; and that said articles were duly signed, published and filed as required by the laws of the State of California. They pray leave to refer to said articles, so far as material to this suit, and to the laws of California authorizing the same. They aver that such consolidation and amalgamation and such articles of consolidation and amalgamation, were real and not pretended; they deny that said articles of incorporation and consolidation were entered into without any authority from the United States or from the Congress of the United States; and they deny that by such articles of agreement of consolidation and amalgamation, or by any consolidation and amalgamation, a new capital stock or a new or different corporation was created or purported to be created, but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations, and not a newly created corporation. As to the contents, purport and effect of the articles of incorporation of the consolidated companies, they pray leave to refer to the same, if anywise material to this suit; and they pray leave to refer

to the laws of the State of California, as existing prior to 1873, authorizing the consolidation and amalgamation of railroad companies incorporated under the laws of the State; the defendants furthermore deny that by said articles of incorporation and amalgamation the defendant the Southern Pacific Railroad Company surrendered to the United States all or any of the grants, rights, franchises or privileges theretofore conferred upon it, or upon the Southern Pacific Railroad Company as it existed prior thereto.

These defendants deny that such articles of consolidation and amalgamation were illegal or void or unauthorized or prohibited by the laws of the State of California, or were unauthorized or prohibited by the laws of the United States, or were entered into without authority from the Congress of the United States, or without other competent authority; but on the contrary they allege that the consolidation and amalgamation of said railroad companies were made in conformity with the laws of the State of California, whose action in that behalf was fully authorized and recognized by the Congress of the United States, and that such amalgamation and consolidation were and are in all respects valid.

XI.

Answering paragraph IX of plaintiff's complaint, the defendants deny the same and all thereof; and allege that in due course of law, and with proper authority, the interior department has issued and caused to be issued to the defendant the Southern Pacific Railroad Company, patents of the United States in due form, for the certain

tracts of land described in plaintiff's "Exhibit A," attached to plaintiff's bill of complaint. They aver that such patents were real and not pretended, and were duly recorded in the general land office before they were delivered to said company, and still remain so of record, and did convey and confirm to said company a portion of the lands in suit herein, and since the delivery thereof the same have been recorded in the counties of Los Angeles and San Bernardino and Kern in the State of California.

XII.

Answering paragraph X of the plaintiff's bill of complaint, the defendants allege that the defendants D. O. Mills and Gerrit L. Lansing, trustees, claim to be and are trustees of certain mortgage to secure the payment of certain negotiable bonds, and claim that such bonds have been sold, issued and delivered to various persons for value, and without notice of any claims or ownership of the complainant to said lands, and they deny that such claims are unfounded, or are not based upon any legal or equitable right to such lands, but, on the contrary, allege that such claims are well founded and valid.

And these defendants, further answering, say that heretofore, and on or about the first day of April, 1875, the Southern Pacific Railroad Company executed to the defendant D. O. Mills and one Lloyd Tevis a mortgage bearing date of that day, and covering all the lands *mentioned in* the plaintiff's complaint here, to secure the proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked

Opposite matter between stars appears the following: "Aug. 31, 1896. Wm. M. V. D. Clk.

defendants' "Exhibit B," and pray to be taken as a part of this answer. That negotiable mortgage bonds to very large amounts were from time to time, between said first day of April, 1875, and October 1, 1888, duly issued thereunder and sold to persons who purchased the same in good faith and for full and valuable consideration, and that of such bonds there are now outstanding in the hands of bona fide holders thereof, for value, bonds to the amount of their par value of $31,293,500. That said Gerrit L. Lansing, named as defendant in this suit, has been duly substituted a mortgage trustee thereunder, in place and stead of said Lloyd Tevis, named as trustee in said original mortgage.

XIII.

The defendants further allege that heretofore and on or about the twenty-fifth day of August, 1888, and before the institution of this suit, the said Southern Pacific Railroad Company executed to the Central Trust Company of New York, a corporation created, organized and existing under and by virtue of the laws of the State of New York, and one of the defendants named in said bill, a further mortgage or deed of trust, covering all the lands *mentioned in* plaintiff's complaint herein, bearing date on said twenty-fifth day of August, 1888, to secure a proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked "Exhibit C," and prayed to be taken as a part of this answer. That negotiable mortgage bonds to large amounts were

Opposite matter between stars appears the following: "Aug. 31, 1886. Wm. M. V. D., Clk.

from time to time subsequent to said twenty-fifth day of August, 1888, and prior to the commencement of this suit, duly issued thereunder and sold to persons who purchased the same in good faith and for full value and valuable consideration, and that of such bonds so issued, prior to the institution of this suit, bonds to the amount of upwards of $10,497,000 are now outstanding in the hands of bona fide holders thereof for value.

XIV.

Answering paragraph XI of plaintiff's bill of complaint, these defendants deny that they are unlawfully removing from any of the land in suit, or from said lands, any wood or timber or minerals or other valuable deposits, or are unlawfully threatening to chop down other trees or any trees on said lands, or unlawfully to remove other minerals or valuable deposits thereon, and deny that unless enjoined will do so in any manner or at all, or to the great or irreparable injury of the plaintiff.

These defendants further aver that they and each of them are not residents or inhabitants of the Southern District of California, and that none of the defendants in this action are residents of or inhabitants of the Southern District of California. On the contrary, the defendant the Southern Pacific Railroad Company is a resident and inhabitant of the Northern District of California; the defendant D. O. Mills is a resident and inhabitant of the State of New York and of the Southern District of New York; the defendant Gerrit L. Lansing is a resident and inhabitant of the Northern District of California.

These defendants and each of them herewith reiterate

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

their pleas to the jurisdiction of this Court heretofore entered and against said jurisdiction.

And these defendants deny all and all manner of matter, cause or thing in the plaintiff's bill of complaint contained, material or necessary for these defendants to make answer to, and not herein well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of any of the defendants. All of which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable Court may direct; and these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,
Solicitor for defendants herein answering.

WM. F. HERRIN,
And WM. SINGER, JR.,
Of counsel.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. United States of America, plaintiff, vs. Southern Pacific Railroad Co. et al., defendants. Answer.

Service of the within answer is hereby admitted this tenth day of January, A. D. 1895. Joseph H. Call, attorney for complainant.

Filed Jan. 10, 1895. Wm. M. Van Dyke, Clerk.

UNITED STATES

vs.

SOUTHERN PACIFIC RAILROAD COMPANY ET AL.,

No. 600.

(4-83-250.)

"EXHIBIT B."—(Attached to Answer.)

Date. This indenture, made and entered into this the first day of April, A. D. 1875, by and between the Southern Pacific Railroad Company, a railroad corporation, duly incorporated and organized under and in pursuance of the laws of the State of California,

Trustees party of the first part, and D. O. Mills and Lloyd Tevis, of the city and county of San Francisco, California, parties of the second part, witnesseth: That

Purpose of Mortgage Whereas, the said party of the first part desires to complete the construction and equipment of its railroad and telegraph lines in the State of California, running from the city of San Francisco, in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley and Polonio Pass, to the Colorado river, at or near the "Needles"; also from Carnadero Junction to San Benito; also from

Route of Railroad Los Gatos Creek via Goshen, to the junction with the first mentioned line between Poso creek and Kern river; also from the junction near Tehachapi Pass via Los Angeles to the Texas Pacific Railroad near Fort Yuma; and also from Los Angeles to Wilmington on San Pedro bay, aggregating eleven hundred

and fifty miles of railroad and telegraph line, and to cancel its present bonded indebtedness for construction secured by mortgage heretofore made and bearing date November first, eighteen hundred and seventy, and to that end intends and is about to issue its first mortgage bonds upon said railroad and telegraph line, and its rolling stock, fixtures and franchises, and also upon the lands granted to it by Congress, by the act of Congress, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved July twenty-seventh, eighteen hundred and sixty-six, and the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, not sold or otherwise disposed of prior to the execution of this mortgage, aggregating, as near as can be estimated, eleven millions of acres; and

Property mortgaged includes grants.

Whereas, heretofore, towit, on the nineteenth day of December, A. D. eighteen hundred and seventy-four, the board of directors of said company, pursuant to the statute of the State of California in such cases made and provided, at a meeting of said board at which all the members thereof were present, did, by a resolution to that effect, which was unanimously adopted and passed, determine and direct that first mortgage bonds upon said railroad and telegraph line, its rolling stock, fixtures and franchises,

Board of Directors authorise mortgage to be made.

and upon said hereinbefore described lands to the number of forty-eight thousand (forty-four thousand of which shall be for one thousand dollars each, and four thousand of which shall be for the sum of five hundred dollars each), in seven series, to be designated by the letters of the alphabet, commencing with the letter "A," and followed by the succeeding letters in regular order to the letter "G," both inclusive, be prepared, executed and issued by the president and secretary of said company. Series "A" to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series "B" to "F," both inclusive, consisting each of five thousand bonds, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and series "G," consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds being payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually. The said series "A" to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the board of directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars; and

Description of bonds.

Whereas, the said board of directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further resolve, that the said series "A" of said bonds should be executed and issued in substantially the following form, and that the succeeding series of said bonds should be in a similar form, with the necessary changes to conform to said resolutions or orders, which form is as follows, towit:

The United States of America.

Form of bond. $1,000. in United States Gold Coin. (Vignette.) In United States $1,000. Gold Coin.

First Mortgage Bond.

No. ——. Series "A"

The Southern Pacific Railroad Company of California,

For value received, promises to pay one thousand dollars to Mark Hopkins, or bearer, in the city of

Rate of interest. New York, thirty years from the date hereof, with interest thereon at the rate of six per centum per annum from said date, payable semi-annually on the first day of October next ensuing, and on the first day of April and October in each year thereafter, in the city of New York, on presentation and surrender of the respective coupons hereunto annexed, both principal and interest payable in United States gold coin at par, dollar for dollar.

This bond is one of Series "A" of the first mortgage bonds issued, and to be issued by the said Southern

Pacific *Pacific* Railroad Company in seven series, designated respectively by the letters of the alphabet, commencing with "A" and ending with "G," both inclusive. Series "A," consisting of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series "B" to "F," both inclusive, consisting each of five thousand bonds for one thousand dollars each numbered from seventeen thousand and one to forty-two thousand, both inclusive and series "G," consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand both inclusive. All of said bonds being payable thirty years after their respective date, with the interest at the rate of six per centum per annum, payable semi-annually.

Series.

Dates.

The said series "A" to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the board of directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

No preference by reason of priority.

The holder of any of such bonds is to have no preference over any other holder of any of said bonds by reason of any priority in date or the time of issuing the same or otherwise.

All of said bonds are secured by a mortgage or

deed of trust bearing even date with the bonds constituting series "A," duly executed by said company to D. O. Mills and Lloyd Tevis, San Francisco, California, as trustees, upon its railroad and telegraph lines in the State of California, running from the city of San Francisco in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley and Polonio Pass to the Colorado river at or near the "Needles"; also from Carnadero Junction to San Benito; also from Los Gatos creek via Goshen to the junction with the first mentioned line between Posa creek and Kern river; also from the junction near Tehachapi Pass, via Los Angeles, to the Texas Pacific Railroad near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, with all the rolling stock, stations, fixtures, and franchises for the permanent use thereof, and the appurtenances thereto now owned or held, or that may be hereafter required by said company for the permanent use of said railroad and telegraph lines.

How secured.

Also, upon all the lands granted to said company by the Congress of the United States, to aid it in the construction of said railroad and telegraph lines, not sold or otherwise disposed of prior to the execution of said mortgage, aggregating, as near as can be estimated, eleven millions of acres.

Includes Lands.

In testimony whereof, the Southern Pacific Railroad Company has caused its corporate seal to be

hereunto affixed, and these presents to be signed by its president and secretary, this first day of April, in the year of our Lord one thousand eight hundred and seventy-five.

————————, President.

————————, Secretary.

And whereas, the said board of directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that to each of said bonds there should be attached sixty interest coupons, numbered respectively from one to sixty, inclusive, substantially in the following form, towit:

Form of Coupons.

$30. Southern Pacific Railroad Company Series A.
of California.

Coupon Bond No. ——. No. ——.

Thirty Dollars.

Interest due ————————.

Payable in the City of New York in United States Gold Coin.

————————, Secretary.

with such changes in the amount in the body and in the coupon as shall be necessary to conform to the order of the board of directors aforesaid, in regard to the several amounts or sums which are payable in each class of bonds; and

Whereas, by an act of Congress of the United States of America, approved on the twenty-seventh day of July, A. D. eighteen hundred and sixty-six, entitled, "An act granting lands to aid in the con-

struction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," there was granted to the said Southern Pacific Railroad Company, party of the first part, a large body of public lands of the United States, to-wit: Every alternate section of public lands, designated by odd numbers, to the amount of ten alternate sections per mile on each side of the railroad and telegraph line of said company, running from the bay of San Francisco to the southeasterly line of the State of California, being about six hundred and thirty-six miles, not sold, reserved, granted, or otherwise appropriated, and free from preemption, homestead, or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office, and such other alternate sections designated by odd numbers as aforesaid, and situated not more than ten miles beyond the limits of the said first alternate sections, which may be selected by said company in lieu of any of the sections first aforesaid which may have been sold, granted, reserved, preempted, occupied as homesteads, or otherwise disposed of, or to which other rights may have attached, as provided in the act of Congress aforesaid for the purpose of aiding in the construction of the railroad and telegraph line of the said party of the first part; and

U. S. Government Land Grant.

Whereas, by an act of Congress of the United States of America, approved on the third day of

March, eighteen hundred and seventy-one, entitled, "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," there was granted to the said Southern Pacific Railroad Company the authority to construct a line of railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, with the same rights, land grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to and imposed upon the said Southern Pacific Railroad Company of California, by the aforesaid act of July twenty-seventh, eighteen hundred and sixty-six, before recited, subject to the rights, present and prospective, of the Atlantic & Pacific Railroad Company, which said last line of road is of the length of three hundred and fifty-six and seven one-hundredths miles; and

Act of Congress authorizing the Company to construct lines to connect with Texas Pacific Railroad and Atlantic & Pacific Railroad.

Whereas, the said board of directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that, to secure the payment of said bonds, a first mortgage upon said road and its rolling stock, stations, fixtures, right of way and franchises, and the lands aforesaid granted by said acts of Congress, not sold or otherwise disposed of or contracted to be sold, as shown by the books of said company, should be executed under the corporate seal of said company, and be signed by its president and secretary, to D. O. Mills and Lloyd Tevis, both of the city and county of San

Mortgage to be executed to Trustees.

Francisco, State of California, as trustees for the holders of said bonds; and

Sinking Fund $100,000 yearly commencing 1882.

Whereas, said board of directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that a Sinking Fund should be created for the redemption and payment of said bonds, by setting apart the sum of one hundred thousand dollars of the net income of said road in the year eighteen hundred and eighty-two and each year thereafter until all of said bonds, principal and interest, shall have been redeemed or paid in trust to be loaned out at interest, upon good securities, or otherwise invested under the order and direction of said board of directors, or used to redeem said bonds as often as one hundred thousand dollars shall come into the sinking fund, in which case notice shall be published in one paper in the city of San Francisco and two papers in New York City, that bonds will be redeemed at a price not exceeding their par value, and inviting bids for the surrender thereof at prices to be named, not exceeding the par value of said bonds; the lowest bids less than par to be accepted, and bonds redeemed, to the extent of the money in the sinking fund.

Redemption of Bonds.

Now, therefore, this indenture witnesseth, that the said Southern Pacific Railroad Company, for the better securing of the payment of the principal and interest of the said first mortgage bonds, and in consideration also of the sum of one dollar, to it in hand paid by the said parties of the second part, the re-

Description of property conveyed to Trustees.

ceipt whereof is hereby acknowledged, has granted, bargained, sold and aliened, conveyed and confirmed, and by these presents, doth grant, bargain, sell, alien, convey and confirm unto the said parties of the second part, and to their successors duly appointed, for the execution of the trusts herein set forth, the following property now or hereafter constituted, purchased, acquired, held in possession and owned by said company, towit: The whole of the railroad and telegraph line of the said company, running from the city of San Francisco, in the State of California, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley and Polonio Pass, to the Colorado river, at or near the "Needles"; also from Carnadero Junction to San Benito; also from Los Gatos creek, via Goshen, to the junction with the first mentioned line, between Poso creek and Kern river; also, from the junction near Tehachapi Pass, via Los Angeles, to the Texas Pacific Railroad near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro bay, aggregating eleven hundred and fifty miles of railroad and telegraph lines, including all the rights of way, roadway, track and tracks, together with all the superstructures, depots, depot grounds, stationhouses, wateringplaces, workshops, machineshops, machinery, sidetracks, turnouts, turntables, weighing scales, locomotives, tenders, cars, rolling stock of all kinds, full equipments, fixtures, tools and all other property which may be necessarily or ordinarily

used in operating or repairing the said railroad, including all of the said property, which is now or may hereafter, in whole or in part, be constructed or completed, purchased, acquired, held, or owned by the said company, pertaining to said railroad, and all the corporate rights, privileges and franchises of said company, pertaining to said road, together with all and singular the tenements, hereditaments, and appurtenances, thereunto belonging and appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues and profits thereof, with all the rights, titles, interests, estate, property, succession, claim and demand, in law or equity, of the said party of the first part, of, in and to the same, or any part and parcel thereof; to have and to hold the above granted and described premises, property and franchises, with the appurtenances, unto the said parties of the second part, and to the survivor of them and to their successors, duly appointed, upon trust and for the use and benefit of the person or persons, body or bodies, politic or corporate, who shall have become, or be from time to time, holders of the said "first mortgage bonds," or any of them. Provided, always, and these presents are upon the express condition that if the said party of the first part, or its successors, shall well and truly pay, or cause or procure to be paid unto the holders, from time to time, of said bonds, and each and every one of them, the said sums of money secured to be paid by the said bonds, and the interest

coupons attached thereto, at the places and times, and in the manner set forth in the said bonds, according to the true intent and meaning thereof, then these presents, and all the property, estate, right, franchises and privileges herein and hereby granted and conveyed, shall cease, determine and be void.

Proceedings in event of default in payment.

But if default shall be made in the payment of the said sums of money specified in said bonds, or in the payment of said interest coupons, or either of them, or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the same should have been paid, according to the terms of said bonds, then the said parties of the second part, or either of them, upon the refusal of the other, or their successors in said trust, by themselves, or their agents, or servants, in that behalf, may, upon request of the holder or holders of not less than one-fourth of said bonds, on which the interest or principal shall so be and have so remained in default, as aforesaid, enter into and upon and take possession of all, or in their or his discretion, any part of the said premises and property hereinbefore described, and work and operate the said railroad, and receive the income, receipts and profits thereof, and out of the same pay: First. The expense of running and operating the same, including therein such reasonable compensation as they or he may allow to the several persons employed or engaged in the running and superintendence of the same, and a reasonable compensation to the parties

of the second part, or their successors, or such of them as shall act in the premises, for their or his care, diligence and responsibility in the premises. Second. The expenses of keeping the said road, the appurtenances, the locomotives and the rolling stock thereof in good and sufficient repair, to prevent deterioration in the value thereof, and all other reasonable and proper charges and expenses of the care and management thereof. And, Third. Pay as far as the same will suffice, all interest and principal, if any, which may be due on said bonds; and in case of any deficiency, to apply said receipts, after the payment of all said charges and expenses, to the payment thereof, ratably without preference of any kind, or the said parties of the second part may in such case foreclose this mortgage, and sell and dispose of, according to law, all the rights, property, privileges, franchises, real and personal, with the appurtenances herein and hereby granted, or so much thereof as may be necessary, and out of the money arising from such sale, pay: First. The costs, and charges, and expenses of the foreclosure and sale, including therein reasonable counsel fees for conducting said proceedings to be allowed and fixed by the Court, but not exceeding thirty thousand dollars. Second. Any expenses, costs and charges of the execution of the trust previously incurred and remaining unpaid. Third. A reasonable compensation to the trustees, or one of them, who may act, for their or his care, trouble and service in completing the exe-

cution of his trust and the distribution of the proceeds of sale, to be fixed by the Court, but not exceeding twenty thousand dollars. And, Fourth. To distribute the residue of said proceeds among the holders of said bonds, in proportion to their several interests, until all have been paid in full, principal and accrued interests.

Proceeds from sale of Depot Lands etc., not needed for such purpose, may be sold and proceeds applied to redemption of Bonds.

And the said party of the first part hereby covenants and agrees that if, at any time, any lands now used for depot or shop purposes, or right of way, or water, or any lands not now used, but which may be hereafter used for such purposes, shall, for any cause, cease to be needed or used by said party of the first part for such purposes, the said parties of the second part may sell the same at the price to be agreed upon by the parties of the first and second parts, and apply the money realized from such sale or sales to the redemption of said bonds in the manner hereinafter provided in the case of money realized from the sale of lands granted by the United States to the said party of the first part.

And the said party of the first part hereby agrees and covenants to and with the said parties of the second part, and their successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be imposed upon the property herein described and hereby mortgaged, and every part thereof, and the said parties of the second part, the survivor of them, or their successors in said trust,

Company to pay all taxes, assessments, etc., or in default Trustees may pay and receive 7 per cent. interest on such payments

or any one or more of the holders of said bonds, may, in case of default of the said party of the first part in this behalf, pay and discharge the same, and any other lien of incumbrance upon said property, which may in any way, either in law or equity, be or become in effect a charge or lien thereon, prior to these presents, or to which this mortgage may be subject or subordinate, and for all payments thus made the parties so making the same shall be allowed interest thereon at the rate of seven per centum per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents, and declared to be payable and collectible in the same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said parties of the second part, upon demand in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises hereinbefore provided.

Will execute any further conveyances required.

And the said party of the first part hereby further covenants and agrees to and with the said parties of the second part, and their successors in said trust, that they will at any and all times hereafter, upon the request of the said parties of the second part, execute, acknowledge and deliver to the said parties of the second part, all and every such further, necessary, and reasonable conveyances and assurances of the said premises or any part thereof, as may by the parties of the second part, or the survivor of them,

or his or their successors in the trust hereby created, be reasonably advised or required for more fully carrying into effect the objects of this conveyance, and the said parties of the second part, and their successors in said trust, shall be entitled to receive a just and proper compensation for all services rendered by them in the discharge of said trust, and the same shall be deemed to be secured hereby.

Compensation to Trustees.

And it is hereby stipulated and agreed that the said parties of the second part, and their successors in said trust, shall not be responsible for the acts or omissions of any agent or agents employed by him or them, in any manner, in and about the execution of the trust hereby created when such agent or agents are selected with reasonable discretion; or with the approbation, or with the knowledge and without the express disapprobation of said party of the first part, nor shall either of the said parties of the second part be responsible for any act or omission of the other in the execution of said trust.

Agents of Trustees.

And, therefore, this indenture further witnesseth: That the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds, and the interest thereon, and in consideration of the premises, and also for and in consideration of the sum of one dollar to the said party of the first part in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed and confirmed, and by these

Convey. of land to Trustees.

presents does grant, bargain, sell, release, enfeoff, convey and confirm unto the said parties of the second part, as trustees, and to their successors and survivor, and their assigns forever.

All and singular the said several sections of land so as aforesaid granted by said acts of Congress; and also all the estate, right, title, interest, claim and demand whatsover, at law or in equity, of, in, or to the same or any part or parcel thereof, which the said party of the first part now has, holds, owns, or is entitled to, or hereafter may or shall acquire, have, hold, own, or be or become entitled to by force or virtue of the said acts of Congress; saving, excepting, and reserving all parts and parcels of said lands which have been sold or contracted to be sold or disposed of heretofore, or which are or shall be included in the right of way of the said railroads and telegraph lines of the said company, as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof, to have and to hold all and singular the lands hereby granted or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said parties of the second part, and their successors and survivor, and their assigns forever, as trustees, for the uses and purposes, and upon the trusts, terms, conditions and agreements in this indenture set forth and declared.

Reserved Land.

Provided, always, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of said bonds, and every of them, the principal sums of money therein mentioned according to the tenor thereof, with interest thereon, at the times and in the manner hereinbefore provided, according to the true intent and meaning of these presents, then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title and interest in any and all property hereby conveyed to the parties of the second part, not then disposed of under the powers hereby conferred, shall revert to and vest in the said party of the first part.

Lands shall revert to and rest in the S. P. R. R. if .....

This indenture further witnesseth, that these presents, and the said bonds are made, executed and delivered upon the trusts, terms, conditions and agreements following, that is to say: That all the lands herein above conveyed and mortgaged shall be under the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit or terms of payment, and such other conditions as shall be agreed on by the said parties of the first and second parts, and as shall seem to them best calculated to secure the payment in full of all the bonds issued as hereinbefore provided, until entry or foreclosure by the trustees, as hereinafter provided. But no title

Land to be under the control of S P. R. R.!

to any tract of land, contracted to be sold by the said party of the first part, shall be given until the whole of the purchase money of said tract shall be paid to said parties of the second part, or their successors or survivor, in cash or in said bonds, or overdue coupons thereof. And for this purpose it is agreed that the said party of the first part and said trustees shall cause all such lands, as they shall from time to time become subject to sale, to be carefully examined, and surveyed, and shall affix to each tract or parcel such price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who may desire to purchase and pay therefor; the prices being, nevertheless, at all times subject to revision and alteration by the said parties; and the party of the first part may reserve from sale any lands necessary for depot grounds, or other purposes connected with the construction or operation of the said railroad or telegraph.

Payments to be made to Trustees.

Land to be graded, etc.

The purchaser of any such land shall be at liberty to pay for the same in the aforesaid bonds or overdue coupons at par; and when any tract or parcel of said lands shall have been purchased and paid for, either in bonds, coupons, or cash, as hereinbefore provided, the same shall be conveyed by the said parties of the first and second parts to the purchaser, in fee simple, and shall by such conveyance be absolutely and forever released from any and all lien or

Lands may be paid for in Bonds and Overdue Coupons.

incumbrance, for or on account of said bonds, or any other debt or obligation of the said party of the first part.

Trustees may convey land by power of attorney.

Provided, that for the sake of convenience in making said conveyances, the said trustees shall have power to act by attorney, duly nominated and appointed, by them, jointly, by letter of attorney, which shall be duly acknowledged and recorded in each and all of the counties in which said lands or any part thereof are situated; and all deeds made in their names by such attorneys shall have the same force and effect as if made by them in person.

Residence of such Attorney.

Provided, further, that the attorney so appointed shall be a resident of the city of San Francisco, in the State of California, and shall reside within convenient reach of the party of the first part.

The said trustees shall and will cancel and discharge each and every bond and the coupons thereon, and all overdue coupons, which they may receive in payment for land, or by purchase, by defacing the seal of the corporation, perforating the signatures of the president and secretary and drawing lines across each of the interest coupons, on receipt thereof; and all bonds and coupons received in payment for lands, as aforesaid, shall, when so cancelled, be delivered to the said party of the first part.

Trustees to cancel Bonds and coupons.

Proceeds of sales of lands applied to the purchase of bonds.

The said trustees shall apply the proceeds of the sales made by them of lands hereby conveyed, to the sole and exclusive purpose of the payment of the bonds provided for in, and issued in conformity to the terms of this indenture.

And for such purpose all such avails shall, from time to time, as the same are realized, be used in the purchase of such bonds in the market, to be cancelled, so long as purchases thereof can be made at par; and whenever such bonds cannot be purchased at that rate, said trustees shall advertise for proposals to sell such bonds to them in two newspapers published in the city of New York, and one newspaper published in the city of San Francisco; and after receiving such proposals they shall have power to purchase such bonds at the lowest terms so offered.

How Bonds shall be purchased

The said party of the first part does hereby covenant and agree to pay to the holders of said bonds, respectively, the said principal sums of money therein mentioned and the interest thereof as aforesaid.

If any default shall be made in the payment either of principal or interest on any of said bonds for six months, after demand at the place of payment when the same shall become due, then the said trustees may, on being requested by the holders of at least one hundred thousand dollars of such bonds enter into and take possession of any of the lands above conveyed, and foreclose this mortgage, and may sell, at public auction so much of said lands as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deducting the costs, charges, and expenses of such entry, foreclosure and sale, to the payment of such arrears of interest. If any such default shall continue for one year from the

In event of default in payments for six months, Trustees may foreclose mortgage and dispose of lands at public auction sufficient to discharge all arrears.

time of such demand and refusal, the principal sum of all bonds then outstanding shall become due and payable, and the said trustees may enter into and take possession of all the lands above by these presents mortgaged or conveyed, foreclose this mortgage and sell at public auction all said lands, or so much thereof as may be necessary, first giving at least six months' previous notice of the time and place of sale in at least one newspaper published in the city of New York, and in one published in each of the cities of San Francisco, Sacramento, Los Angeles and San Diego; and they shall apply the proceeds thereof, after deducting the costs, charges and expenses of such last-mentioned entry, foreclosure and sale, to the payment of all said bonds, then outstanding, and the interest accrued thereon, rendering the surplus, if any there shall be, unto the said party of the first part. In case of any sale upon any such foreclosure, or at any public auction, the said trustees shall make, execute and deliver a conveyance of the lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part, in and to the property so sold, to the same extent as the same shall have been previously enjoyed and held by the said party of the first part.

Foreclosure proceedings for interest to cease if interest is subsequently paid.

If after any such entry shall be made or any such foreclosure proceedings shall be commenced for the satisfying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest

and deliver the coupons therefor to the said trustees, and pay all the costs, charges and expenses incurred in such entry and foreclosure and the proceedings thereon; then and in every such case the said trustees shall discontinue their proceedings thereon, and restore to the said party of the first part all of such lands to be held subject to the above conveyance and nortgage and subject to all the provisions, terms and conditions of these presents, in like manner as if such entry had not been made, nor such foreclosure proceedings commenced. In case a vacancy shall happen in the number of trustees hereinbefore mentioned as parties of the second part in this indenture, or if one of them shall be temporarily absent, the remaining trustee shall, while said vacancy or absence exists, have all the rights, exercise all the powers and discharge all the duties devolving on the said trustee by said instrument. But as soon as it conveniently may be done, such vacancy shall be filled by the nomination by the remaining trustee of some proper person to fill such vacancy, which nomination shall be submitted to the board of directors of said company, and if approved by them, the person so nominated and approved, immediately shall become a trustee under this instrument. If said nomination is not approved, another person shall be nominated by said remaining trustee, and in like manner submitted for approval, and so on till three nominations shall have been made. But if three successive nominations shall be made and none of them shall

How vacancy in Trustees is to be filled.

be approved by said board, said vacancy shall be filled by a committee of three persons, selected, one by said remaining trustee, one by said board of directors, and a third by the two thus selected, and the person appointed trustee by a majority of the committee shall be and remain a trustee under this instrument. And the person regularly appointed a trustee to fill a vacancy in either of the forms above specified, shall, from and after his said appointment, and his acceptance of the appointment, become vested with the same estates, powers, rights and interests, and charged with the same duties and responsibilities as if he had been one of the original trustees, parties of the second part, named in and executing this instrument; and the prior remaining trustee may and shall execute such conveyances and instruments as may be proper or necessary to vest the same in the new trustee jointly with himself, or to furnish evidence of such vesting. If at any time either of the said trustees shall resign his place as trustee by a proper deed in writing to that effect, and such resignation shall be accepted by the said party of the first part, then, and in every such case, the place of such resigning trustee thereupon shall become and be vacant.

Reconveyance by Trustees upon payment of bonds and interest.

Whenever all the bonds which shall have been made and issued by the said party of the first part under and in conformity to the provisions of this indenture, with the interest thereon, together with all the expenses incurred by the said trustees in the ex-

ecution of the trust herein and hereby created shall have been fully paid or satisfied, the said trustees shall reconvey to the said party of the first part all and singular the said lands then in the hands of the said trustees, and not before that time sold or disposed of, in the execution of the trust hereby created. In case the said trustees shall at any time have any trust moneys on hand, received from the sale of the lands hereby conveyed which will not be required to meet any immediate liabilities of the company, to which said moneys are by these presents devoted, the said moneys shall be loaned on interest, or deposited on interest, with some bank or trust company in the city of San Francisco or Sacramento, subject to be drawn by checks signed by the trustees or such one of them as they may designate. All of the books of the said company, and of the trustees, relating to the lands hereby conveyed, shall be mutually open to the inspection of said company and said trustees. It shall be the duty of the said trustees to certify and deliver to the said party of the first part the said bonds, as the same from time to time shall be demanded, issued or used by the said party of the first part.

Deposit of surplus monies by Trustees.

And it is hereby mutually agreed by and between the parties hereto, that the said parties of the second part, and their survivor and successors, and their heirs, executors and administrators, shall not be answerable for the acts, omissions or defaults of each other, nor for anything short of their own gross negligence or wilful misfeasance.

Responsibility of Trustees.

Provisions of Acts of Congress to be observed.

It is hereby declared by the parties to this indenture, that all the provisions of said acts of Congress, so far as they are applicable, are hereby made and shall be deemed and taken to be a part of this instrument; and the said provisions in all that concerns the sale and disposal of the said lands hereby conveyed to the parties of the second part are to be observed and strictly and faithfully carried out and fulfilled.

Will execute further instruments if necessary to secure payments of Bonds.

And the said party of the first part covenants and agrees to and with the said parties of the second part, that the said party of the first part shall and will, at any and all times hereafter, and from time to time, execute, acknowledge and deliver, under its corporate seal, to the said parties of the second part, and their survivors or successors, all such other or further assurances, deeds, mortgages, obligations, transfers, indentures and instruments in writing, and shall and will do and perform all such other or further acts or things, as shall or may be necessary or proper, or as their counsel, learned in the law, shall deem necessary, proper or expedient for the better or more effectually securing upon the above conveyed and mortgaged premises the payment of the said bonds so to be issued, and the interest due and to grow due thereon in manner aforesaid, or for carrying into effect the true intent, design, objects and purposes of these presents. And the said parties of the second part hereby accept the trust created and declared by this instrument, and agree to discharge the same pursuant to the provisions in that behalf herein contained.

In witness whereof, the said Southern Pacific Railroad Company has here caused these presents to be signed by its president and secretary, and sealed with its corporate seal, and the above parties of the second part have hereunto set their hands and seal, the day and year first above written.

CHARLES CROCKER,
President Southern Pacific Railroad Company.

J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

[Corporate Seal S. P. R. R. Co.]

We accept the trust declared in the foregoing instrument.

D. O. MILLS, (Seal.)
LLOYD TEVIS, (Seal.)
Trustees.

State of California, }
City and County of San Francisco. } ss.

On this third (3rd) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the president of the Southern Pacific Railroad Company, and J. L. Willcutt, known to me to be the secretary of the Southern Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this third day of July, A. D. 1875.

CHARLES J. TORBERT,

Notary public in and for the city and county of San Francisco, State of California.

[Notarial Seal]

State of California,
City and County of San Francisco. } ss.

I, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, residing in the city of San Francisco, duly commissioned and sworn, do certify that on the sixth (6th) day of July, in the year one thousand eight hundred and seventy-five (1875), personally appeared before me in the city and county of San Francisco, State of California aforesaid, Charles Crocker, president of the Southern Pacific Railroad Company, and J. L. Willcutt, secretary of the Southern Pacific Railroad Company, who are both personally known to me to be the said officers of the said Southern Pacific Railroad Company respectively, and the individuals described in and who have executed the foregoing instrument as such officers of said company, and they each severally and personally, then and there, acknowledge to me that they executed the said instrument as the free act and deed of the said Southern Pacific Railroad Company, freely and voluntarily, and for the uses and purposes therein mentioned; and the said J. L. Willcutt, with whom I am personally acquainted, being by me duly sworn, did depose and say that he resides in the

city and county of San Francisco, State of California; that he is and was secretary of the Southern Pacific Railroad Company at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company, and is, and was at the date of said instrument, the legal custodian of said seal; that the seal affixed to the foregoing instrument was and is such corporate seal, and was by him so affixed by order of the board of directors of the said Southern Pacific Railroad Company; that he signed his name thereto as secretary of said company by the like order. And the said J. L. Willcutt further said that he was and is acquainted with Charles Crocker, and knows that said Charles Crocker is and was president of the Southern Pacific Railroad Company at the date of said instrument; that the signature of the said Charles Crocker subscribed to said instrument is in the genuine handwriting of the said Charles Crocker, and was thereto by him subscribed by the like order of the board of directors of said company, and in the presence of him, and said deponent.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, the sixth day of July, A. D. 1875.

CHARLES J. TORBERT,

Notary public in and for the city and county of San Francisco, State of California.

[Notarial Seal]

State of California,
City and County of San Francisco. } ss.

On this seventh (7th) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a notary public, in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared D. O. Mills and Lloyd Tevis, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, this seventh day of July, A. D. 1875.

CHARLES J. TORBERT,
Notary public in and for the city and county of San Francisco, State of California.

[Notarial Seal]

Filed for record at the request of D. W. Parkhurst, and recorded in the office of the county recorder of San Mateo county, July 8, 1875, at 5 P. M., in Liber 11 of Mortgages, at page 2 and following.

Witness my hand and seal of office.

Paid, $22.50.

GEO. H. RICE,
County recorder.
By W. R. Thomas,
Deputy.

[Seal]

Filed for record at the request of D. W. Parkhurst, July 9, A. D. 1875, at 9 o'clock and 26 minutes A. M., and recorded in Book 15 of Mortgages, at page 156, et seq., records of the county of Santa Clara, in the State of California.

Witness my hand and seal of office.

Paid, $15.

W. J. COLAHAN,
County recorder.
By F. J. Saxe,
[Seal] Deputy.

Filed for record at the request of D. W. Parkhurst, July 9, A. D. 1875, at 8 o'clock and 53 minutes P. M., and recorded in Book 1 of Mortgages, at page 586 and following, records of San Benito county, in the State of California.

Witness my hand and seal of office.

Fees, $15, paid.

H. M. HAYES,
[Seal] County recorder.

Filed for record at the request of D. W. Parkhurst, July 10, A. D. 1875, at 8 o'clock and 10 minutes P. M., and recorded in Volume 17, page 529, and following pages of the mortgage records of the county of Santa Cruz, in the State of California.

Witness my hand and seal of said county recorder.

Paid $15.00.

H. E. MAKINNEY,
County recorder, in and for Santa Cruz county.
[Seal]

Filed for record at the request of D. W. Parkhurst, July 12, A. D. 1875, at 9 o'clock and 55 minutes A. M., and recorded in Book 1 of Mortgages, page 183 and following, records of the county of Monterey, in the state of California.

Witness my hand and seal of office.

Fees $15, p'd.

HERBERT MILLS,
County recorder.

[Seal]

Filed for record at the request of D. W. Parkhurst, July 13, A. D. 1875, at six o'clock and 25 minutes P. M., and recorded in Book C of Mortgages, page 540 et seq., records of the county of San Luis Obispo, in the State California.

Witness my hand and seal of office county recorder.

Fees, $15.

CHAS. W. DANA,
County recorder.

[Seal]

Filed for record at the request of D. W. Parkhurst, July 14, A. D. 1875, at 2 o'clock and 20 minutes P. M., and recorded in Book F of mortgages, pages 164 and following, records of the county of Santa Barbara, in the State of California.

Witness my hand and seal of office of county recorder.

Fees, $15, p'd.

H. P. STONE,
County recorder.
By J. O. B. Wentling,
Deputy.

[Seal]

Filed for record at the request of D. W. Parkhurst, July 16, A. D. 1875, at 8 o'clock and 40 minutes A. M., and recorded in Book 15 of Mortgages, page 600, et seq., records of the county of Los Angeles, in the State of California.

Witness my hand and seal of office county recorder.

Fees, $15, p'd.

J. W. GILLETTE,
County recorder.
By D. S. Lovejoy,
[Seal] Deputy.

Filed for record at the request of D. W. Parkhurst, July 19, A. D. 1875, at nine o'clock and 15 minutes A. M., and recorded in Book Volume 2 of Mortgages, pages 217 and following, records of the county of Kern in the state of California.

Witness my hand and seal of office.

Fees, $15, p'd.

F. W. CRAIG,
[Seal] County recorder.

Filed for record at the request of D. W. Parkhurst, Esq., July 20, A. D. 1875, at 8 o'clock and 15 minutes P. M., and recorded in Book D of Mortgages, pp. 310, et seq., records of the county of Fresno, in the State of California.

Witness my hand and seal of office of county recorder.

Pd. $15.

A. M. CLARK,
County recorder.
By C. L. Wainwright,
[Seal] Deputy.

Filed for record at the request of D. W. Parkhurst, July 21, A. D. 1875, at 10 o'clock and 30 minutes A. M., and recorded in Book K of Mortgages, page 1, et seq., records of the county of Tulare, in the State of California.

Witness my hand and seal of office of county recorder. Pd. $15.

J. E. DENNY,
Recorder.
By John G. Knox,
[Seal] Deputy.

Filed for record at the request of D. W. Parkhurst, July 23, A. D. 1875, at 10 o'clock and 40 minutes P. M., and recorded in Book D of Mortgages, 544, et seq., records of the county of San Bernardino, in the State of California.

Witness my hand and seal of office of county recorder. Pd. $15.00.

SYDNEY P. WAITE,
County recorder.
By R. S. Swing,
[Seal] Deputy.

Filed for record at the request of D. W. Parkhurst, July 26, A. D. 1875, at 10 o'clock and 20 minutes A. M., and recorded in Book No. 7 of Mortgages, pages 103 et seq., records of the county of San Diego, in the State of California.

Witness my hand and seal of office of county recorder Fees, $15.

A. S. GRANT,
County recorder.
By E. G. Haight,
[Seal] Deputy.

Filed for record at the request of D. W. Parkhurst, July 28, A. D. 1875, at 24 minutes past 4 P. M., and recorded in Book No. 2 of Mortgages, pages 46 et seq., records of the county of Ventura, State of California.

Witness my hand and seal of office of county recorder. Fees, $18.

JOHN T. STOW,
County recorder.

[Seal]

Recorded at the request of D. W. Parkhurst, August 3, A. D. 1875, at 1 P. M., in Liber 443 of Mortgages, page 309, in the office of the county recorder of the city and county of San Francisco, State of California.

O. H. FRANK,
County recorder.

[Seal]

Recorded at the request of Wells, Fargo & Co., August 20, 1880, at 20 minutes past 9 A. M., in Book 1 of Mortgages, page 557, et seq., records of Merced county.

$15.

E. J. HAMILTON,
County recorder.
By M. H. Walsh,
Deputy.

[Seal]

Recorded at request of Wells, Fargo & Co., August 23, A. D. 1880, at 5 minutes past 9 o'clock A. M., in Volume 15 of Mortgages, at pages 139, et seq., records of Stanislaus county.

$15, paid.

JOHN McCOY,
Recorder.

[Seal]

Recorded at request of J. L. Willcutt, September 6, 1880, at 30 minutes past 10 o'clock A. M., in Liber 624 of Mortgages, page 305, in the office of the county recorder of the city and county of San Francisco, State of California.

W. K. DIETRICH,
County recorder.
Per Richard Blauvelt,
Deputy.

[Seal]

Resignation of Lloyd Tevis, Trustee.

To the President and Board of Directors of the Southern Pacific Railroad Company, and all other persons concerned:

Resignation of Lloyd Tevis, Trustee.

Know ye, that I, Lloyd Tevis, one of the trustees under a certain indenture made and entered into on the first day of April, A. D. 1875, by and between the Southern Pacific Railroad Company, a railroad corporation duly incorporated and organized under and in pursuance of the laws of the State of California, party of the first part, and D. O. Mills and Lloyd Tevis, of the city and county of San Francisco, California, parties of the second part, have this day resigned, and do hereby resign, the position of said trustee under said indenture, in pursuance of the provisions thereof.

In testimony whereof, I have hereunto set my hand and seal on this the twenty-fourth day of March, A. D. 1883.

LLOYD TEVIS. [Seal]

City and County of San Francisco, } ss.
State of California. }

On this twenty-seventh (27th) day of March, in the year one thousand eight hundred and eighty-three (1883), before me, Charles J. Torbert, a notary public, in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared Lloyd Tevis, known to me to be the person whose name is subscribed to the above instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this twenty-seventh (27th) day of March, A. D. 1883.

[Notarial Seal.]

CHARLES J. TORBERT,
Notary public in and for the city and county of San Francisco, State of California.

Nomination of Gerrit L. Lansing as Trustee.

To the Southern Pacific Railroad Company and to its Board of Directors:

Lloyd Tevis, of the city and county of San Francisco, one of the trustees named in a certain indenture made and entered into on the first day of April, 1875, between the Southern Pacific Railroad Company, party of the first part, and D. O. Mills and Lloyd Tevis, of the city and county of San Francisco, parties of the second part, having duly resigned his place as trustee by proper deed in writing to that

effect, and such resignation having been accepted by the party of the first part, and thereby the place of such resigning trustee having become and now is vacant,

Nomination of Gerrit L. Lansing for Trustee submitted to the Board of directors.

Therefore, I, the remaining trustee, in accordance with the provisions of said indenture in this respect, do hereby nominate Gerrit L. Lansing a proper person to fill such vacancy, and do hereby submit to the board of directors of said company such nomination for the approval of said board.

Dated in New York this third day of April, A. D. 1883.

D. O. MILLS. [Seal]

Witness:

EDWIN F. COREY.

City and County of New York, } ss.
State of New York. }

Be it remembered, that on this third day of April, in the year one thousand eight hundred and eighty-three, before me, the undersigned, Edwin F. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of California to take acknowledgments of deeds, etc., to be used or recorded therein, personally appeared D. O. Mills, known to me to be the person whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

witness whereof, I have hereunto set my hand and affixed my official seal, the day and year first aforesaid.

[Commissioner's Seal.]

EDWIN F. COREY,

Commissioner for State of California. Office: 54 Wall street, N. Y.

Appointment of G. L. Lansing as Trustee.

Whereas, on the first day of April, 1875, this company conveyed all its railroad and telegraph lines, its rights of way, roadway, tracks and other property, including all its lands, to D. O. Mills and Lloyd Tevis, upon certain trusts therein declared;

And whereas, on the twenty-fourth day of March, 1883, said Lloyd Tevis resigned his trust under said conveyance;

And whereas, on the third day of April, 1883, the said D. O. Mills, pursuant to the conditions of said trust, did nominate Gerrit L. Lansing, of the city of San Francisco and State of California, as a fit and proper person to fill the vacancy caused by the said resignation of the said Lloyd Tevis;

Nomination of Gerrit L. Lansing approved by the Board of Directors

Now, therefore, it is ordered that the said nomination be approved, and that the said Gerrit L. Lansing be and he is hereby appointed to fill said vacancy.

Witness the corporate seal of said Southern Pacific Railroad Company, and the hands of its presi-

dent and secretary hereunto fixed and set, on this the seventeenth day of April, A. D. 1883.

CHARLES CROCKER,
President.

J. L. WILLCUTT,
Secretary.

[Corporate Seal: S. P. R. R. Co.]

City and County of San Francisco, } ss.
State of California, }

On this nineteenth (19th) day of April in the year one thousand eight hundred and eighty-three (1883) before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary of the corporation that executed the within instrument, and asknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this nineteenth (19th) day of April, A. D. 1883.

[Notarial Seal.]

CHARLES J. TORBERT,
Notary public in and for the city and county of San Francisco, State of California.

Acceptance of G. L. Lansing as Trustee.

Know all men by these presents: That whereas, on the first day of April, A. D. 1875, the Southern Pacific Railroad Company, a railroad corporation duly

incorporated under and pursuant to the laws of the State of California, did, by an instrument in writing, convey all its railroad and telegraph lines, its rights of way, roadway, tracks and other property, including all its lands, to D. O. Mills and Lloyd Tevis, upon certain trust declared in said conveyance;

And whereas, on the twenty-fourth day of March, 1883, said Lloyd Tevis resigned his trust under said conveyance;

And whereas, on the third day of April, 1883, the said D. O. Mills, pursuant to the conditions of said trust, did nominate Gerrit L. Lansing, of the city of San Francisco, and State of California, as a fit and proper person to fill the vacancy caused by the said resignation of the said Lloyd Tevis;

Acceptance of Gerrit L. Lansing as Trustee.

And whereas, on the seventeenth day of April, 1883, the board of directors of said Southern Pacific Railroad Company did approve the said nomination;

Now, therefore, I, the said Gerrit L. Lansing, pursuant to the provisions of said trust-mortgage, do hereby accept the trust created by said mortgage as the sucessors of said Lloyd Tevis.

In witness whereof, I have hereunto set my hand and affixed my seal this eighteenth day of April, A. D. 1883.

GERRIT L. LANSING. [Seal]

City and County of San Francisco, } ss.
State of California. }

On this nineteenth (19th) day of April, in the year one thousand eight hundred and eighty-three (1883), before

me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared Gerrit L. Lansing, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this nineteenth (19th) day of April, A. D., 1883.

[Notarial Seal.]

CHARLES J. TORBERT,

Notary public in and for the city and county of San Francisco, State of California.

Filed for record at request of R. G. Oliver, May 22, A. D. 1883, at 10 o'clock A. M., and recorded in Book 17 of Mortgages, page 22, et seq., records of the county of San Mateo, in the State of California.

Witness my hand and seal of county recorder.

[Seal.]

J. W. BICKNELL,
County Recorder.
[illegible] J. B. Thompson, Deputy.

Filed for record at the request of R. G. Oliver, May 22, A. D. 1883, at 5 minutes past 2 o'clock P. M., and recorded in Book J of Miscellaneous Records, pages 448 et seq., records of the county of Santa Clara, in the State of California.

Witness my hand and seal of county recorder.

J. M. PITMAN,
County recorder.

[Seal] By Geo. Fethersten, Deputy.

Filed for record at the request of R. G. Oliver, May 23, A. D. 1883, at 20 minutes past 9 o'clock A. M., and recorded in Book 6 of Mortgages, pages 528 and following, records of the county of San Benito, in the state of California.

Witness my hand and seal of county recorder.

THOS. F. McMAHON,
County recorder.
By Wm. McCarthy,
Deputy recorder.

[Seal]

Filed for record at the request of R. G. Oliver, May 24, A. D. 1883, at 50 minutes past 9 o'clock A. M., and recorded in Volume 37 of Mortgages, at pages 1 and following, records of the county of Santa Cruz, in the State of California.

Witness my hand and seal of county recorder.

H. E. MAKINNEY,
County recorder.

[Seal]

Filed for record at the request of R. G. Oliver, May 24, 1883, at 40 minutes past 4 P. M. and recorded in Liber S of Mortgages, at pages 163 and following, records of Monterey county, State of California.

Witness my hand and seal of county recorder.

M. M. SPEEGLE,
County recorder.

[Seal]

Filed for record at the request of R. G. Oliver, May 26, A. D. 1883, at 4 o'clock and 5 minutes P. M., and re-

corded in Book 1 of Mortgages, page 240 et seq., San Luis Obispo county records, State of California.

Witness my hand and seal of county recorder.

F. E. DARKE,
County recorder.

[Seal]

Filed for record at the request of R. G. Oliver, May 31, A. D. 1883, at 9 o'clock and 20 minutes A. M., and recorded in Book B of Miscellaneous Records, pages 446 et seq., records of the county of Santa Barbara, in the State of California.

Witness my hand and seal of county recorder.

H. STODDARD,
Recorder.

[Seal]

Filed for record at the request of R. G. Oliver, May 31, A. D. 1883, at 4 o'clock and 30 minutes P. M., and recorded in Book 2 of Miscellaneous Records, pages 108, et seq., records of the county of Ventura, in the State of California.

Witness my hand and seal of county recorder.

JOHN J. STOW,
Recorder
By Robt. W. Forth,
Deputy.

[Seal]

Filed for record at the request of R. G. Oliver, June 2, 1883, at 43 minutes past 2 o'clock P. M., and recorded in Book 50 of Mortgages, pages 256 et seq., records of Los Angeles County, State of California.

Witness my hand and seal of county recorder, Los Angeles County, California.

CHAS. E. MILES,
Recorder.
By W. B. Pritchard,
Deputy.

[Seal]

Filed for record at the request of R. G. Oliver, June 5, A. D. 1883, at 40 minutes past 11 A. M., and recorded in Book M of Mortgages, pages 565 et seq., records of the county of San Bernardino, in the State of California.

Witness my hand and seal of county clerk, who is ex officio county recorder.

W. F. HOLCOMB,
County recorder.
By E. A. Nisbet,
Deputy.

[Seal]

Filed for record at the request of R. G. Oliver, June 6, A. D. 1883, at 10 o'clock and 5 minutes A. M., and recorded in Book No. 12 of Mortgages, pages 1 et seq., records of the county of San Diego, in the State of California, this June 6, 1883, at 2 o'clock P. M.

Witness my hand and seal of county recorder.

E. G. HAIGHT,
County recorder.
By H. T. Christian,
Deputy.

[Seal]

Filed for record at the request of R. G. Oliver, June 9, A. D. 1883, at 10 o'clock and 10 minutes A. M., and re-

corded in Book Volume six (6) of Mortgages, page 116 et seq., records of the county of Kern, in the State of California.

Witness my hand and seal of county recorder.

A. T. LIGHTNER,
County recorder.

[Seal]

Filed for record at the request of R. G. Oliver, June 11, A. D. 1883, at 9 o'clock and 40 minutes A. M., and recorded in Book S of Mortgages, pages 612 et seq., records of the county of Tulare, in the State of California.

Witness my hand and seal of county recorder.

J. E. DENNY,
County recorder.

[Seal]

Filed for record at the request of R. G. Oliver, June 12, A. D. 1883, at 7 o'clock and 40 minutes A. M., and recorded in Book O of Mortgages, pages 43 et seq., records of the county of Fresno, in the State of California.

Witness my hand and seal of county recorder.

A. M. CLARK,
County recorder.
By A. C. Williams,
Deputy recorder.

[Seal]

Filed for record at the request of R. G. Oliver, June 12, A. D. 1883, at 3 o'clock and 35 minutes P. M., and recorded in Book A, Miscellaneous Records, pages 174 et

seq., records of the county of Merced, in the State of California.

Witness my hand and seal of county recorder.

J. F. McSWAIN,
County recorder.

[Seal]

Filed for record at the request of R. G. Oliver, June 13, A. D. 1883, at 10 o'clock and 30 minutes A. M., recorded in Book Volume Nineteen (19) of Mortgages, pages 308, et seq., records of the county of Stanislaus, in the State of California.

Witness my hand and seal of county recorder.

JOHN McCOY,
County recorder.

[Seal]

Recorded in the office of the county recorder of the city and county of San Francisco, June 15, 1883, at 15 minutes past 12 o'clock M., in Liber 45 of Miscellaneous, page 54, at the request of R. G. Oliver.

WM. J. BRYAN,
County recorder.
Per Henry Casey,
Deputy.

[Seal]

[Endorsed]: Trust Mortgage. Southern Pacific Railroad Co. to D. O. Mills and Lloyd Tevis, Trustees. Dated April 1, 1875. Resignation of Lloyd Tevis and appointment of Gerrit L. Lansing. Acceptance April 18, 1883. Filed Jan. 22, 1895. Wm. M. Van Dyke, Clerk.

United States,
v.
S. P. R. R. Co. et al. } No. 600.

EXHIBIT C.—(Attached to Answer.)

This indenture, made this twenty-fifth day of August, 1888, between the Southern Pacific Railroad Company, a railroad corporation duly organized and existing under the laws of the United States and of the State of California, party of the first part, the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky and lessee of portions of the Southern Pacific Railroad, party of the second part, and the Central Trust Company of New York, a corporation created, organized, and existing under the laws of the State of New York, party of the third part, witnesseth:

That whereas, The Southern Pacific Railroad Company as it existed prior to the consolidation and amalgamation hereinafter set out did, to secure the payment of its bonds in the sum of $46,000,000, heretofore, to wit: on the first day of April, 1875, make and execute its first mortgage on its entire line of railroad as then constituted, to-wit: on the whole of its railroad and telegraph line running from the city of San Francisco, in the State of California, in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley and Polonio Pass, to the Colorado river at or near the "Needles"; also from Carnadero Junction to San Benito; also from Los Gatos creek via Goshen to the junction with the first mentioned line, between Poso creek and Kern river; also from the

junction near Tehachapi Pass via Los Angeles to the Texas Pacific Railroad near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro bay, aggregating eleven hundred and fifty (1,150) miles of railroad and telegraph line, more or less, and on the several sections of land granted to said Southern Pacific Railroad Company by the acts of Congress of July 27, 1866, and March 3, 1871, as stated in said mortgage, saving, excepting, and reserving, however, all parts and parcels of said lands which had been sold or contracted to be sold or disposed of theretofore or which were or should be included in the rights of way of said railroads and telegraph lines of said company as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings, or erections thereof.

And whereas, subsequent thereto by instrument in writing dated the fourth day of May, 1888, and pursuant to the laws of the State of California, in such cases made and provided, the San Jose and Almaden Railroad Company, the Pajaro and Santa Cruz Railroad Company, the Monterey Railroad Company, the Monterey Extension Railroad Company, the Southern Pacific Branch Railway Company, the San Pablo & Tulare Railroad Company, the San Pablo & Tulare Extension Railroad Company, the San Ramon Valley Railroad Company, the Stockton & Copperopolis Railroad Company, the Stockton & Tulare Railroad Company, the San Joaquin Valley & Yosemite Railroad Company, the Los Angeles & San Diego Railroad Company, the Los Angeles and Indepen-

dence Railroad Company, the Long Beach, Whittier & Los Angeles County Railroad Company, the Long Beach Railroad Company, the Southern Pacific Railroad Extension Company and the Ramona & San Bernardino Railroad Company (railroad corporations organized and existing under the laws of the State of California) amalgamated and consolidated their capital stocks, debts, properties, assets, and franchises with the capital stock, debts, properties, assets, and franchises of the Southern Pacific Railroad Company of California.

And whereas, by force and effect of said amalgamation and consolidation, the said party of the first part has succeeded to all of the debts, properties, assets, and franchises of said several railroad companies, and now holds and owns the said several lines of railroad heretofore owned and held by them respectively, together with their respective properties, assets, and franchises.

And whereas, the said Pajaro & Santa Cruz Railroad Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of five hundred and thirty (530) of its thirty-year first-mortgage bonds of one thousand dollars each, bearing date the first day of January, 1885, bearing interest at the rate of six per cent per annum, payable semi-annually, secured by a mortgage or deed of trust bearing date the first day of January, 1885, to S. T. Gage and E. B. Ryan, and covering its railroad, commencing at the town of Pajaro, in the county of Monterey, in the State of California, and extending thence to the city of

Santa Cruz, in the county of Santa Cruz in said State, with a branch line commencing at the town of Aptos, in said county of Santa Cruz, and running thence in a northerly and northeasterly direction, following the meanders of Aptos creek to the point of confluence of said creek with the creek running from White's lagoon, a distance of twenty-six miles, as near as may be, together with all its corporate rights, its appurtenances, etc.

And whereas, the said Monterey Railroad Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of two hundred and fifty (250) of its twenty-year first-mortgage bonds of one thousand dollars each, bearing date the first day of April, 1880, bearing interest at the rate of five per cent per annum, payabl semi-annuallly, secured by a mortgage or deed of trust, bearing date the ninth day of March, 1880, to Stephen T. Gage and E. B. Ryan, and covering the whole of the railroad line of said company, commencing at or near the town of Castroville, in the county of Monterey, in the State of California, and running through the county of Monterey, to a point at or near the city of Monterey in said county, a distance of fifteen and four-tenths (15.4) miles, together with all its corporate rights, its appurtenances, etc.

And whereas, the said Southern Pacific Branch Railway Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of nine thousand of its fifty-year first mortgage bonds of one thou-

sand dollars each, bearing date the first day of April, 1887, bearing interest at the rate of six per cent per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the twenty-fourth day of November, 1886, to William E. Brown and Gerrit L. Lansing, and covering the whole of the railroad line of the said company, commencing at a point near San Miguel, in the county of San Luis Obispo, in the State of California, there connecting with the railroad of the Southern Pacific Railroad Company, and running from thence in a general southeasterly direction through and into the counties of San Luis Obispo, Santa Barbara, Ventura, and Los Angeles, to a connection with the railroad of the Southern Pacific Railroad Company, near Newhall, in said Los Angeles county, a distance of about two hundred and fifty miles, as near as may be, together with all the corporate rights pertaining to said road, its appurtenances, etc.

And whereas, the said San Pablo & Tulare Railroad Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of three thousand seven hundred and fifty (3,750) of its thirty-year first-mortgage bonds of one thousand dollars each, bearing date the first day of April, 1878, bearing interest at the rate of six per cent per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the second day of September, 1878, to Albert Gallatin and Charles Miller, and covering its line of railroad, constructed and unconstructed, running from a point at or

near Martinez, in the county of Contra Costa, through the counties of Contra Costa, San Joaquin, Stanislaus, Merced, and Fresno to a point at or near Los Gatos Creek, a distance of one hundred and fifty (150) miles, as near as may be, with all rolling stock, appurtenances, etc.

And whereas, the said Los Angeles & San Diego Railroad Company, to aid in the construction of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of two thousand eight hundred (2,800) of its thirty-year first-mortgage bonds of one thousand dollars each, bearing date the first day of July, 1880, with interest at the rate of six per cent per annum, payable semi-annually, secured by a mortgage or deed of trust bearing date the second day of December, 1880, to S. T. Gage and E. B. Ryan, and covering its railroad line constructed and unconstructed, from the city of Los Angeles, in a southerly direction, to the city of San Diego, in the southwestern part of the State of California, with all rolling stock, appurtenances, etc., a distance of one hundred and forty miles, as near as may be.

And whereas, there are now outstanding $530,000 of said Pajaro & Santa Cruz Railroad Company's bonds; $220,000 of said Monterey Railroad Company's bonds (the balance of $30,000 having been redeemed, canceled, and retired); $3,145,000 of said Southern Pacific Branch Railway Company's bonds (the balance, $5,855,000, being unissued and in the hands of the party of the first part); $1,023,000 of said San Pablo & Tulare Railroad Company's bonds (the balance, $2,727,000, being unissued and in the hands of the party of the first part); and $556,000 of the said Los Angeles & San Diego Railroad Company's

bonds (the balance, $2,244,000, being unissued and in the hands of the party of the first part).

And whereas, said mortgages and each of them are valid and subsisting liens upon the lines of railroad heretofore described, and now the property of the party of the first part.

And whereas, the owners of all the outstanding bonds heretofore issued as aforesaid by the Pajaro & Santa Cruz Railroad Company, the Monterey Railroad Company, the San Pablo & Tulare Railroad Company, and the Los Angeles & San Diego Railroad Company are willing to surrender said bonds and permit the respective mortgages heretofore made to secure the payment thereof and hereinbefore described, to be satisfied of record and canceled, and receive in lieu thereof new fifty-year five per cent bonds secured by this mortgage.

And whereas, the party of the first part desires and intends to redeem and take up said mortgage bonds issued by said constituent companies, towit, the outstanding mortgage bonds of the Pajaro & Santa Cruz Railroad Company in the sum of $530,000, the outstanding mortgage bonds of the Monterey Railroad Company in the sum of $220,000, the outstanding mortgage bonds of the San Pablo & Tulare Railroad Company in the sum of $1,023,000, and the outstanding mortgage bonds of the Los Angeles & San Diego Railroad Company in the sum of $556,000, and retire the same, and to destroy, cancel, and retire the unissued bonds of the San Pablo & Tulare Railroad Company in the sum of $2,727,000, and the unissued bonds of the Los Angeles & San Diego Railroad

Company in the sum of $2,244,000, and cause said existing mortgages to be satisfied of record and canceled; and as rapidly as the same can be done upon terms satisfactory to the party of the first part to arrange for the redemption of the mortgage bonds issued by said Southern Pacific Branch Railway Company, and when arrangements have been made for the redemption of all of such bonds to cause the same to be canceled and the mortgage securing the same to be satisfied of record; and in lieu of said outstanding bonds to issue new fifty-year five per cent bonds secured by this mortgage, and said party of the first part desires and intends to pay off and discharge the floating debt incurred in the construction and completion of certain portions of its lines of railroad, and desires to complete the construction and equipment thereof, and to that end desires and intends to issue its bonds in an amount necessary to accomplish said objects and purposes, and to secure the payment thereof by mortgage upon certain of its constituent lines of railroad hereinafter more particularly described.

And whereas, heretofore, towit, on the twenty-first day of August, 1888, the board of directors of said Southern Pacific Railroad Company, at a meeting of said board, at which all the members thereof were present, by a resolution to that effect, which was unanimously adopted, passed, and concurred in, did determine and direct that bonds of said company be prepared, executed, and issued in its name and under its corporate seal, and signed by its president and secretary, to bear date the first day of October, 1888, in the sum of one thousand dollars each, to

the number of thirty-eight thousand, numbered from one to thirty-eight thousand inclusive, payable to the Central Trust Company of New York, or to the bearer thereof, fifty years after date, with interest at the rate of five per cent per annum, payable semi-annually, on the first days of April and October of each year ensuing its date, payable both principal and interest in United States gold coin in the city of New York.

And whereas, the said board of directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further order and direct that said bonds should be drawn in substantially the following form, towit:

$1,000. United States of America. $1,000.

Southern Pacific Railroad Company (of California).

First Mortgage Five Per Cent Gold Bond.

The Southern Pacific Railroad Company (of California) acknowledges itself indebted to the Central Trust Company of New York, or to the bearer hereof, in the sum of one thousand dolllrs gold coin of the United States, which sum it promises to pay to the bearer hereof, or, if registered, to the registered holder hereof, fifty years after date, and it further promises that, on presentaton and surrender at or after maturity of the respective interest coupons hereunto annexed, it will pay to the person presenting the same, or if this bond is registered and the interest coupons appertaining thereto canceled, it will pay to the registered holder hereof, interest on such principal sum at the rate of five per cent per annum, semi-annually, on or after the

first day of April and October of each year ensuing the date hereof, both principal and interest payable at the office or agency of the company in the city of New York, in United States gold coin.

This is one of the first mortgage bonds issued under and secured by the indenture of mortgage or deed of trust from this company to the Central Trust Company of New York, trustee, dated the twenty-fifth day of August, 1888.

None of said bonds are to be in anywise binding or obligatory unless authenticated by a certificate endorsed thereon, signed by said trustee or its successor or successors in said trust.

This bond may at any time, upon production thereof to said railroad company, and proper endorsement being made thereon, and either with or without the surrender to said railroad company for cancellation of all unpaid interest coupons appertaining thereto, be registered upon the books of the company in the name of the holder thereof, and thereupon its transferability by delivery will cease, and thereafter it can be transferred only by the registered holder or his attorney by transfer duly made upon said books.

In witness whereof, the said Southern Pacific Railroad Company has caused its corporate seal to be hereunto affixed, and this bond to be signed by its president and secretary, this first day of October, one thousand eight hundred and eighty-eight.

SOUTHERN PACIFIC RAILROAD COMPANY,

_____

President.

_____

Secretary.

And whereas, the said board of directors, at the meeting aforesaid, and in the manner and form and by the vote aforesaid, did further direct that to each of said bonds there should be attached one hundred interest coupons, numbered respectively from one to one hundred, inclusive, substantially in the following form, to-wit:

$25. (Coupon.) $25.

Southern Pacific Railroad Company (of California)

First Mortgage Five Per Cent Gold Bond No. ——.

Interest coupon for twenty-five dollars, due ——, payable in the city of New York, in United States gold coin.

Coupon No. ——.

——————,

Treasurer.

And that all such coupons should bear the impression of the engraved signature of the treasurer, which impression should be regarded and treated, in fact and in law, as equivalent to a manual signing by said officer.

And whereas, the said board of directors, at the meeting aforesaid, and in manner and form and by the vote aforesaid, did further direct that, to secure the payment of said bonds, a mortgage upon certain of its constituent lines of railroad and telegraph and upon certain of its lands should be executed in its name and under its corporate seal, and be signed by its president and secretary, to the Central Trust Company of New York, as trustee for the holders of said bonds; said mortgage to cover the railroad and telegraph line, rolling stock, stations, fixtures and franchises held, owned and possessed by it in

the following constituent lines of railroad, all lying within the State of California.

First. Running from Hillsdale to the town of New Almaden, all in Santa Clara county, being seven and eight-tenths (7.8) miles in length, more or less.

Second. Running from Pajaro in Monterey county to Santa Cruz in Santa Cruz county; also, running from Aptos in said Santa Cruz county, northerly and northeasterly about five miles, being twenty-six and two-tenths (26.2) miles in length, more or less.

Third. Running from a point at or near Castroville Station in Monterey county to a point at or near Monterey, in said county; thence northwesterly to a point at or near Pacific Grove Retreat; and thence southwesterly to a point near the mouth of the Carmel river, an estimated length of thirty-one and twelve-hundredths (31.12) miles.

Fourth. Running from a point near San Miguel in San Luis Obispo county, in the State of California, there connecting with the railroad of the Southern Pacific Railroad Company; and running from thence in a general southeasterly direction through and into the counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to a connection with the railroad of the Southern Pacific Railroad Company in said Los Angeles county, near Newhall, being about two hundred and fifty (250) miles in length.

Fifth. Running from a point near Martinez in Contra Costa county to Tracy in San Joaquin county, a distance of forty-seven and fifty-eight hundredths (47.58) miles.

more or less; running thence from Tracy through the counties of San Joaquin, Stanislaus, Merced, Fresno and Tulare, to a connection with the San Joaquin division of the railroad of the party of the first part at or near Pampa, in the county of Kern, a distance of two hundred and sixty miles, more or less, and aggregating three hundred and seven and fifty-eight hundredths (307.58) miles, more or less.

Sixth. Running from a point at or near Avon in Contra Costa county to a point on the Central Pacific railroad at or near Pleasanton, in the county of Alameda, a distance of thirty-five (35) miles, more or less.

Seventh. Running from a point at or near Oakdale in Stanislaus county, through and into the counties of Stanislaus, Merced, Fresno and Tulare, to a point at or near the town of Poso, in Kern county, a distance of two hundred (200) miles, more or less, with branches connecting with the Central Pacific railroad to or near Modesto, in Stanislaus county, a distance of sixteen (16) miles, more or less, to or near Merced, in Merced county, a distance of ten (10) miles, more or less, to or near Sycamore, in Fresno county, a distance of ten (10) miles, more or less, to or near Fresno, in Fresno county, a distance of ten (10) miles, more or less, with a branch to or near Tulare, in Tulare county, there connecting with the San Joaquin division of the railroad of the party of the first part, a distance of sixteen (16) miles, more or less; said line and branches being two hundred and sixty-two (262) miles in length, more or less.

Eighth. Running from Berenda Station, in Fresno county, to a point at or near Perry's Ranch in said county, a distance of twenty-five (25) miles, more or less.

Ninth. Running from a point at or near the city of Los Angeles, in the county of Los Angeles, to the towns of Anaheim and Santa Ana, in said county; and thence through the counties of Los Angeles and San Diego, to a point at or near the city of San Diego, in said last mentioned county, a distance of one hundred and forty (140) miles, more or less.

Tenth. Running from a point at or near the city of Los Angeles, to Santa Monica, in Los Angeles county, a distance of eighteen and fifty hundredths (18.50) miles, more or less.

Eleventh. Running from a point at or near Long Beach, in Los Angeles county, to Whittier; thence to Ramona, a distance of thirty (30) miles, more or less, also running from a point at or near Los Angeles to a point on the main line of the railroad of the party of the first part between El Monte and Puente, and thence northeasterly to a point on or near San Dimos creek, a distance of thirty (30) miles, more or less, all in said county of Los Angeles, and aggregating sixty (60) miles in length more——less.

Twelfth. Running from a point at or near Long Beach Junction, in Los Angeles county, to the town of Long Beach; thence easterly to the boundary line between the Ranchos Los Cerritos and Los Alamitos, in said county, a distance of four (4) miles, more or less.

Thirteenth. Running from a point on the line of the Wilmington division of the railroad of the party of the

first part between the towns of Wilmington and San Pedro, in the county of Los Angeles, through said town of San Pedro to a point at or near Point Fermin; thence westerly through the lands of the San Pedro Harbor, Dock & Land Association to the westerly boundary of said lands, all in the county of Los Angeles, and being five (5) miles in length, more or less.

Fourteenth. Running from a point at or near Ramona, in Los Angeles county, to a point at or near Crafton, in San Bernardino county, a distance of seventy-one (71) miles, more or less.

Fifteenth. Running from the city of San Francisco, in a southerly and southeasterly direction by way of Carnadero Junction, Salinas valley and Polonio Pass to Mojave Junction; also from Carnadero Junction to San Benito; also from Los Gatos creek, via Goshen to the junction with the first mentioned line between Poso creek and Kern river; also from the junction near Tehachapi Pass, via Los Angeles to Yuma, in the county of San Diego; and also from Los Angeles to Wilmington on San Pedro bay, aggregating nine hundred and eight miles of railroad and telegraph line, or thereabouts.

And also to cover the lands granted to the Southern Pacific Railroad Company by the acts of Congress of July 27, 1866, and March 3, 1871, above referred to, not sold or contracted to be sold or disposed of prior to the execution of this mortgage or included in the right of way of the railroads and telegraph lines of the said Company or used or to be used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

And whereas, said board of directors at the meeting aforesaid and in the manner and form, and by the vote aforesaid did further direct that a sinking fund should be created for the redemption and payment of said bonds by setting apart the sum of twenty thousand dollars of the net income derived by said company from the constituent lines of railroad herein mortgaged in the year 1898, and in each year thereafter, until all of said bonds, principal and interest, shall be redeemed or paid, in trust, to be loaned out at interest upon good securities, or otherwise invested, under the order and direction of said board of directors, or used to redeem said bonds as often as twenty thousand dollars shall come into the sinking fund; in which case notice shall be published in one daily paper in the city of New York, and one daily paper in the city of San Francisco, for such length of time as the board of directors may order, that said bonds will be redeemed, and inviting bids for the surrender thereof, at prices to be named, the lowest bids to be accepted, and bonds redeemed to the extent of the money in the sinking fund.

And whereas, the Southern Pacific Company, party of the second part herein, and lessee of certain portions of the railroads of the party of the first part, affected by this mortgage, has been in writing notified and informed of this mortgage, and has, in writing, by order of its board of directors given its consent thereto, and as an evidence of such consent has become a party hereto.

Now, therefore, this indenture witnesseth: That the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds,

and the interest thereon, and in consideration of the sum of one dollar to the said party of the first part in hand paid by the party of the third part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed and confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey and confirm unto the said party of the third part, as trustee, and to its successors and assigns forever, the following property, now and hereafter constructed, purchased, acquired, held in possession and owned by said party of the first part, towit:

Its constituent lines of railroad lying within the State of California and running:

First. From Hillsdale to the town of New Almaden, all in Santa Clara county, being seven and eight-tenths (7.8) miles in length, more or less.

Second. From Pajaro in Monterey county to Santa Cruz, in Santa Cruz county; also, running from Aptos in said Santa Cruz county northerly and northeasterly about five (5) miles, being twenty-six and two tenths (26.2) miles in length, more or less.

Third. From a point at or near Castroville Station in Monterey county, to a point at or near Monterey in said county; thence northwesterly to a point at or near Pacific Road Retreat, and thence southwesterly to a point near the mouth of Carmel river, an estimated length of thirty-one and twelve one-hundredth (31.12) miles.

Fourth. From a point near San Miguel in San Luis Obispo county, in the State of California, there connecting with the railroad of the Southern Pacific Railroad

Company, and running from thence in a general southeasterly direction through and into the counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to a connection with the railroad of the Southern Pacific Railroad Company in said Los Angeles county near Newhall, being about two hundred and fifty (250) miles in length.

Fifth. From a point at or near Martinez in Contra Costa county to Tracy in San Joaquin county, a distance of forty-seven and fifty-eight hundredths (47.58) miles, more or less; thence from Tracy through the counties of San Joaquin, Stanislaus, Merced, Fresno and Tulare, to a connection with the San Joaquin division of the railroad of the party of the first part, at or near Pampa, in the county of Kern, a distance of two hundred and sixty (260) miles, more or less, and aggregating three hundred and seven and fifty-eight hundredths (307.58) miles, more or less.

Sixth. From a point at or near Avon, in Contra Costa county, to a point on the Central Pacific Railroad at or near Pleasanton, in the county of Alameda, a distance of thirty-five miles, more or less.

Seventh. From a point at or near Oakdale in Stanislaus county through and into the counties of Stanislaus, Merced, Fresno and Tulare to a point at or near the town of Poso in Kern county, a distance of two hundred (200) miles more or less, with a branch connecting with the main line of the Central Pacific Railroad to or near Modesto in Stanislaus county, a distance of sixteen (16) miles, more or less, a branch to or near Merced in Merced

county, a distance of ten (10) miles, more or less, a branch to or near Sycamore in Fresno county, a distance of ten (10) miles, more or less, a branch to or near Fresno in Fresno county, a distance of ten (10) miles, more or less, a branch to or near Tulare, in Tulare county, there connecting with the San Joaquin division of the railroad of the party of the first part, a distance of sixteen (16) miles, more of less; said line and branches being two hundred and sixty-two (262) miles in length, more or less.

Eighth. From Berenda Station in Fresno county to a point at or near Perry's Ranch in said county, a distance of twenty-five (25) miles, more or less.

Ninth. From a point at or near the city of Los Angeles, in the county of Los Angeles, to the towns of Anaheim and Santa Ana in said county, and thence through the counties of Los Angeles and San Diego to a point at or near the city of San Diego, in said last-mentioned county, a distance of one hundred and forty (140) miles, more or less.

Tenth. From a point at or near the city of Los Angeles to Santa Monica in Los Angeles county, a distance of eighteen and fifty-hundredths(18.50) miles, more or less.

Eleventh. From a point at or near Long Beach in Los Angeles county to Whittier, thence to Ramona, a distance of thirty (30) miles, more or less; also running from a point at or near Los Angeles to a point on the main line of the railroad of the party of the first part between El Monte and Puente, and thence northeasterly to a point on or near San Dimos creek, a distance of thirty (30) miles,

more or less, all in said county of Los Angeles, and aggregating sixty (60) miles in length, more or less.

Twelfth. From a point at or near Long Beach Junction in Los Angeles county to the town of Long Beach, thence easterly to the boundary line between the Ranchos Los Cerritos and Los Alamitos in said county, a distance of four (4) miles, more or less.

Thirteenth. From a point on the line of the Wilmington division of the railroad of the party of the first part between the towns of Wilmington and San Pedro, in the county of Los Angeles, through said town of San Pedro to a point at or near Point Fermin, thence westerly through the lands of the San Pedro Harbor, Dock & Land Association to the westerly boundary of said lands, all in the county of Los Angeles, and being five (5) miles in length, more or less.

Fourteenth. From a point at or near Ramona in Los Angeles county to a point at or near Crafton in San Bernardino county, a distance of seventy-one (71) miles, more or less.

Fifteenth. From the city of San Francisco in a southerly and southeasterly direction by way of Carnadero Junction, Salinas valley and Polonio Pass to Mojave Junction; also from Carnadero Junction to San Benito; also from Los Gatos creek via Goshen to the junction with the first-mentioned line between Poso creek and Kern river; also from the junction near Tehachapi Pass via Los Angeles to Yuma, in the county of San Diego; also from Los Angeles to Wilmington on San Pedro bay, aggregating nine hundred and eight (908) miles of railroad and telegraph line or thereabouts.

Including all the rights of way, track and tracks, together with all the superstructures, depots, depot grounds, station houses, wateringplaces, sidetracks, turnouts, turntables, weighing scales, locomotives, tenders, cars, rolling stock of all kinds, equipments, fixtures, tools, telegraph lines and all other property which may now or hereafter be acquired for the purpose of operating the constituent lines of railroad hereby mortgaged, including all of the said property which now is or may hereafter, in whole or in part, be constructed or completed, purchased, acquired, held or owned by the said company pertaining to that portion of the said lines of railroad hereby mortgaged, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging and appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues and profits thereof, with all the rights, titles, interest, estate, property, succession, claim and demand, in law or equity, of the said party of the first part of, in and to the same or any part or parcel thereof.

Also all and singular the several sections of land so as aforesaid granted by said acts of Congress, and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in or to the same, or any part or parcel thereof which said party of the first part now has, holds, owns or is entitled to or hereafter may or shall acquire, have, own or be or become entitled to, by force or virtue of the said acts of Congress, saving, excepting and reserving all parts and parcels of said lands which have been sold or contracted to be sold or disposed

of heretofore, or which are or shall be included in the right of way of the railroads and telegraph lines of the said company, as defined and granted by the acts of Congress aforesaid or used for the construction and operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

To have and to hold the above granted and described premises, property and franchises, with the appurtenances, unto the said party of the third part, and to its successors duly appointed, upon trust and for the use and benefit of the person or persons, body or bodies politic or corporate, who shall have become or be from time to time holders of the said first mortgage bonds secured hereby, or any of them.

Provided, always, and these presents are upon the express condition that if the said party of the first part, or its successors, shall well and truly pay or cause or procure to be paid unto the holders, from time to time, of said bonds and each and every one of them, the said sums of money secured to be paid by the said bonds, and the interest coupons attached thereto, at the places and times, and in the manner set forth in the said bonds, according to the true intent and meaning thereof, then these presents, and the property, estate, rights, franchises and privileges herein and hereby granted and conveyed shall cease, determine and be void.

Until default shall be made by the said party of the first part, its successors and assigns, in the payment of the principal or interest of the said bonds or some of them or some part thereof, as hereinafter provided, the said

party of the first part, its successors and assigns, shall be suffered and permitted to possess and enjoy the said premises, with their appurtenances and all and singular the rights and franchises hereinbefore described, and to receive, take and use the tolls, income, earnings and profits thereof, and the trustee or trustees hereunder shall have full power in its or their discretion, upon written request of the party of the first part, its successors or assigns, to convey, by way of release or otherwise, and fully release from the lien of this mortgage, any lands or other property of any description (except only the lands granted by acts of Congress, as hereinbefore described) which in its or their judgment shall not be necessary for or for use in connection with the said railroads, and to consent to such changes in the location of tracks, depots and other buildings as in its or their judgment may be expedient, and to make and deliver the releases and conveyances necessary to carry the same into effect, but any lands or other property which may be acquired for permanent use in substitution for any so released or conveyed, shall thereupon become subject to the lien of this mortgage, and upon request of the trustee or trustees hereunder shall be conveyed to it or them by the party of the first part, its successors or assigns, upon the trusts of these presents.

But if default shall be made in the payment of the said sums of money specified in said bonds, or in the payment of said interest coupons, or either of them, or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the

same should have been paid according to the terms of said bonds, then the said party of the third part, or its successor in said trust, by itself or its agents or servants, in that behalf, may, upon request of the holder or holders of not less than one-fourth of said bonds then outstanding, on which the interest or principal shall be and have so remained in default as aforesaid, enter into and upon and take possession of all, or in its or their discretion, any part of, the said constituent lines of railroad hereby mortgaged, and work and operate the said constituent lines of railroad, and receive the income, receipts and profits thereof and out of the same pay,

First, the expense of running and operating the same, including therein reasonable counsel fees and such reasonable compensation as it may allow to the several persons employed or engaged in the running and superintendence of the same.

Second, the expense of keeping the said roads, the appurtenances, the locomotives and the rolling stock thereof in good and sufficient repair to prevent deterioration in the value thereof, and all other reasonable and proper charges and expenses of the care and management thereof.

And, third, pay, as far as the same will suffice, all interest and principal, if any, which may be due on said bonds, and in case of any deficiency apply the said receipts, after the payment of all said charges and expenses, to the payment thereof, ratably, without preference of any kind.

Or the said party of the third part may, in case of default as aforesaid, and upon request as aforesaid, foreclose this mortgage and sell and dispose of, according to law, all of the constituent lines of railroad hereby mortgaged, together with all of the rights, property, privileges, franchises, real and personal, connected therewith or pertaining thereto that are subject to this mortgage, with the appurtenances herein and hereby granted, or so much as may be necessary, and out of the money arising from said sale, pay:

First, The cost and charges and expenses of the foreclosure and sale.

Second, Any expenses, costs and charges of the execution of the trust, previously incurred and remaining unpaid.

And, third, distribute the residue of said proceeds among the holders of said bonds and coupons in proportion to their several interests, until all have been paid in full, principal and accrued interest.

If any default shall be made in the payment of interest on any of said bonds for six months, after demand at the place of payment, when the same shall become due, then the said trustee may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take possession of any of the lands above conveyed, and foreclose this mortgage thereon, and may sell at public auction upon like notice as hereinafter prescribed so much of said lands as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deducting the costs, charges and expenses of such entry, foreclosure and sale, to the payment of such ar-

rears of interest. If any such default shall continue for one year from the time of such demand and refusal, the principal sum of all bonds then outstanding shall become due and payable, and thereupon or upon default in the payment of the principal of such bonds at their maturity, the said trustee may enter into and take possession of all the lands above by these presents mortgaged or conveyed, foreclose this mortgage thereon and sell at public auction all said lands or so much thereof as may be necessary, first giving at least six months' previous notice of the time and place of sale in at least one newspaper published in the city of New York, and in one published in each of the cities of San Francisco, Sacramento, Los Angeles and San Diego; and they shall apply the proceeds thereof, after deducting the costs, charges and expenses of such last-mentioned entry, foreclosure and sale, to the payment of all said bonds, then outstanding, and the interest accrued thereon, rendering the surplus, if any there shall be, unto the said party of the first part.

In case of any sale upon any such foreclosure or at any such public auction, the said trustee shall make, execute, and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part, in and to the property so sold, to the same extent as the same shall have been previously enjoyed and held by the said party of the first part.

If after any such entry shall be made or any foreclosure proceedings shall be commenced, for the satisfying of interest only, as above provided, and before the lands are

sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said trustee, and pay all the costs, charges and expenses incurred in such entry and foreclosure and the proceedings thereon; then and in every such case the said trustee shall discontinue its proceedings thereon, and restore to said party of the first part all of such lands to be held subject to the above conveyance and mortgage, and subject to all the provisions, terms and conditions of these presents, in like manner as if such entry had not been made, nor such foreclosure proceedings commenced.

All lands granted or conveyed under the acts of Congress hereinbefore referred to and in anywise covered or affected by the provisions hereof shall be subject to the express provision that if and so long as the bonds issued under and secured by the said indenture of mortgage to D. O. Mills and Lloyd Tevis, dated April 1, 1875, or any thereof, shall remain outstanding, any and all sales made in the manner in said last-mentioned indenture of mortgage prescribed, shall absolutely and forever release the said lands from any and all lien or encumbrance of, under or in respect of this mortgage or the bonds issued thereunder; and if and when all the bonds issued under said indenture of mortgage of April 1, 1875, shall have been fully satisfied and discharged, and the lien of such last-mentioned indenture of mortgage upon such lands fully released, then the said lands so far as they remain unsold at that time shall be subject to the like provisions in respect to sale and conveyance, and release from the lien of this mortgage as are in said mortgage of April 1,

1875, prescribed in respect to sale, and conveyance, and release from the lien thereof.

This indenture further witnesseth: That said party of the first part hereby agrees and covenants to and with said party of the third part that it will create a sinking fund for the redemption and payment of said bonds, by setting apart the sum of twenty thousand dollars of the net income derived by it from the constituent lines of railroad herein mortgaged, in the year 1898, and in each year thereafter, until all of said bonds, principal and interest, shall be redeemed or paid, in trust, to be loaned out at interest upon good securities, or otherwise invested under the order and direction of the board of directors of the party of the first part, or used to redeem said bonds as often as twenty thousand dollars shall come into the sinking fund; in which case notice shall be published in one daily paper in the city of New York, and one daily paper in the city of San Francisco for such length of time as said board of directors may order, that said bonds will be redeemed, and inviting bids for the surrender thereof, at prices to be named, the lowest bids to be accepted, and bonds redeemed to the extent of the money in the sinking fund.

And this indenture further witnesseth: That the said party of the first part hereby agrees and covenants to and with the said party of the third part, and its successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be legally imposed upon the property herein described and hereby mortgaged, and

every part thereof, and the said party of the third part, or its successors in said trust, or any one or more of the holders of said bonds, may in case of default of the said party of the first part in this behalf, pay and discharge the same, or any other lien or encumbrance upon said property which may in any way, either in law or equity, be or become in effect a charge or lien thereon prior to these presents, or to which this mortgage may be subject or subordinate, and for all payments thus made, the parties so making the same shall be allowed interest thereon at the rate of six per cent per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents, and declared to be payable and collectible in the same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said party of the third part, upon demand, in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises hereinbefore provided.

And this indenture further witnesseth: That the said party of the first part further covenants and agrees to and with the said party of the third part, and its successors in said trust, that it will at any and all times hereafter upon the request of the said party of the third part, execute, acknowledge, and deliver to the said party of the third part, and its successors in said trust, all and every such further necessary and reasonable conveyances and assurances of the said premises, or any part thereof as may by the party of the third part or its successors in the

trust hereby created, be reasonably advised or required for more fully carrying into effect the objects of this conveyance.

And the said party of the third part and its successors in said trust, shall be entitled to receive a just and proper compensation for all services rendered by it or them in the discharge of said trust, and the same shall be deemed to be secured thereby, and it is hereby stipulated and agreed, that the said party of the third part and its successors in said trust, shall not be responsible for the acts or omissions of any agent or agents employed by it or them in any manner in and about the execution of the trust hereby created, when such agent or agents are selected with reasonable discretion, or with the approbation or with the knowledge and without the express disapprobation of said party of the first part.

This indenture further witnesseth: That should the said party of the third part for any reason fail, refuse or become incompetent to discharge the duties or trusts herein conveyed to, imposed on and accepted by it, then and in that event the board of directors of the party of the first part shall nominate and appoint a successor or successors to said party of the third part, which said successor or successors shall be vested with the same properties and clothed with the same powers, rights and duties, and be subject to the same obligations as the said party of the third part named herein, as fully as though he, they or it had been named herein as such trustee or trustees.

And this indenture further witnesseth: That the party of the first part hereby agrees to take up, pay off, dis-

charge and retire the outstanding bonds of the Pajaro & Santa Cruz Railroad Company in the sum of five hundred and thirty thousand dollars ($530,000), the outstanding bonds of the Monterey Railroad Company, in the sum of two hundred and twenty thousand dollars ($220,000); the outstanding bonds of the San Pablo & Tulare Railroad Company, in the sum of one million and twenty-three thousand $1,023,000) dollars; and the outstanding bonds of the Los Angeles & San Diego Railroad Company, in the sum of five hundred and fifty-six thousand ($556,000) dollars, and to destroy, cancel and retire all of said bonds unissued and in its hands, and cause said existing mortgages to be satisfied of record and canceled, and to take up said outstanding bonds with the new fifty-year five per cent bonds to be issued under this mortgage, upon such terms as may be agreed upon, said redemption and cancellation and satisfaction to be made without unnecessary delay.

It is further provided, covenanted, declared and agreed, that the party of the third part and its successors in the trust hereby created is and are from time to time to authenticate and certify as issued hereunder and deliver to the party of the first part, its successors or assigns, first mortgage bonds in the form or substantially the form above prescribed, to amounts which shall aggregate, but shall not exceed, twenty-two thousand five hundred dollars par value of such bonds per mile for each mile of road constructed or acquired by the said party of the first part, its successors or assigns, and described in the foregoing thirteen subdivisions hereof designated from first to third,

both inclusive, and from fifth to fourteenth, both inclusive, and for twenty-five miles in addition thereto; and to further amounts not exceeding seven thousand five hundred dollars per mile additional thereto for expenses and disbursements incurred in and about double-tracking, masonry, iron bridges, rolling-stock or other betterments or improvements either to the permanent way, local or terminal facilities or rolling-stock. The said party of the third part, and its successors in the trust hereby created, is and are also from time to time to authenticate and certify as issued hereunder and deliver to the party of the first part, its successors and assigns, additional first mortgage bonds in the form or substantially the form above prescribed to the amounts to which bonds of the Southern Pacific Branch Railway Company issued or to be issued under and secured by the mortgage of November 24, 1886, hereinbefore referred to, shall have been deposited with the trustee hereunder.

All bonds so deposited with the trustee hereunder shall be held as collateral security for the bonds issued under this mortgage until all of the bonds issued under and secured by such mortgage of the Southern Pacific Branch Railway Company shall have been so deposited, whereupon such deposited bonds shall be canceled and the mortgage securing the same shall be satisfied of record. While such Southern Pacific Branch Railway Company's bonds remain so on deposit with the trustee, neither such bonds nor the coupons appertaining thereto shall be required to be paid unless proceedings shall be taken for the foreclosure of the mortgage securing the same, in which case

all the bonds and coupons which shall have been so deposited with the trustee shall be entitled to share, for the benefit of the bonds issued under this mortgage, on equal terms with the other bonds issued under and secured by said Southern Pacific Branch Railway Company mortgage.

When said Southern Pacific Branch Railway Company mortgage shall have been satisfied of record, the party of the first part, its successors and assigns, shall be entitled from time to time to receive from the trustee hereunder, duly authenticated as issued under and secured by this mortgage, bonds in respect of the line described in the foregoing subdivision fourth hereof, on the mileage basis of $22,500 and $7,500 as above prescribed in respect of the lines described in subdivisions first to third, both inclusive, and from fifth to fourteenth, both inclusive, due allowance being made on the basis of $30,000 per mile for the bonds theretofore issued against deposit of said Southern Pacific Branch Line bonds.

Authenticating certificates to such bonds are to be signed, and deliveries thereof to be made by the trustee under this mortgage from time to time upon presentation to it of certificates, in writing, executed by the president and chief engineer of the party of the first part, or its successors, reciting the facts authorizing delivery of such bonds hereunder and without other evidence or proof of such facts. Provided, however, that notwithstanding anything herein contained, the party of the first part or its successors may at any time or from time to time require the party of the third part or its successors, to au-

thenticate and certify hereunder and deliver to said party of the first part, its successors or assigns, and permit the sale of, such amount or amounts of such bonds as the party of the first part, or its successors may think fit; provided, that the proceeds of any such bonds issued in excess of the limits hereinabove prescribed shall be received by the trustee or trustees hereunder, and not by the party of the first part or its successors or appointees, and shall be disbursed by said trustee or trustees to the party of the first part or its successors or appointees, only pro rata as and when the party of the first part or its successors would have been entitled to receive such bonds under the foregoing provisions hereof; and, provided further, that the total amount of bonds issued under or secured by this deed of trust is not in any event to exceed for all purposes herein mentioned the aggregate sum of thirty-eight million dollars.

In witness whereof, the said Southern Pacific Railroad Company, the party of the first part, has caused these presents to be signed in its name by its president and attested by its secretary, and sealed with its corporate seal.

SOUTHERN PACIFIC RAILROAD COMPANY,

By CHAS. F. CROCKER,

President.

Attest:

J. L. WILLCUTT,

Secretary.

[Seal]

The Southern Pacific Company, party of the second part, the lessee of portions of the said Southern Pacific

Railroad affected by the foregoing instrument, does hereby consent thereto, and hereby waives any and all objections it might or could have to the execution thereof, or to the issuance of the bonds therein provided for, provided that nothing in this consent or assent contained shall be construed as a grant of any of the property rights of said Southern Pacific Company, or of its franchises, to the mortgagee or trustee named herein.

In testimony whereof, said Southern Pacific Company has caused these presents to be signed in its name by its third vice-president and attested by its secretary, and its corporate seal to be hereunto affixed this twenty-fifth day of August, 1888.

SOUTHERN PACIFIC COMPANY,
By CHAS. F. CROCKER,
Third Vice-President.

Attest:
G. L. LANSING,
Secretary.
[Seal]

The Central Trust Company of New York, party of the third part to the foregoing mortgage or deed of trust, hereby accepts the trust created and declared in and by the foregoing instrument, and agrees to discharge the same pursuant to the provisions in that behalf therein contained.

In testimony whereof, said Central Trust Company of New York has caused these presents to be signed in its name by its second vice-president and attested by its as-

sistant secretary, and its corporate seal to be hereunto affixed this seventh day of September, 1888.

CENTRAL TRUST COMPANY OF NEW YORK,
By E. FRANCIS HYDE,
Second Vice-President.

Attest:
B. G. MITCHELL,
Secretary.

[Seal]

City and County of San Francisco, } ss.
State of California. }

I, J. F. Kingwell, a notary public in and for the city and county of San Francisco, State of California, residing in said city and county, duly commissioned and sworn, do certify that on the twenty-fifth day of August, A. D. 1888, personally appeared before me, in said city and county, Charles F. Crocker, president of the Southern Pacific Railroad Company, and J. L. Willcutt, secretary of the Southern Pacific Railroad Company, who are both personally known to me to be the said officers of the said Southern Pacific Railroad Company respectively, and the individuals described in and who have executed the foregoing instrument as such officers of said company and they each severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Southern Pacific Railroad Company freely and voluntarily and for the uses and purposes therein mentioned, and the said J. L. Willcutt, with whom I am personally acquainted, being duly

sworn, did depose and say: That he resides in the city of Oakland, county of Alameda, and state of California; that he is and was the secretary of the Southern Pacific Railroad Company at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company and he is and was at the date of execution of said instrument the legal custodian of said seal; that the seal affixed to the foregoing instrument, was and is such corporate seal, and was by him so affixed by order of the board of directors of said Southern Pacific Railroad Company; that he signed his name thereto as secretary of said company by the like order. And the said J. L. Willcutt, further said that he was acquainted with Charles F. Crocker, and knows that said Charles F. Crocker is and was president of the Southern Pacific Railroad Company at the date and execution of said instrument; that the signature of the said Charles F. Crocker subscribed to said instrument is in the genuine handwriting of the said Charles F. Crocker, and was thereto by him subscribed by the like order of the board of directors of said company, and in the presence of him, the said deponent.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

J. F. KINGWELL,

Notary public in and for the city and county of San Francisco, California.

[Seal]

City and County of San Francisco, } ss.
State of California. }

On this twenty-fifth (25) day of August, in the year one thousand eight hundred and eighty-eight (1888), before me, J. F. Kingwell, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared Chas. F. Crocker, known to me to be the third vice-president of the Southern Pacific Company, and G. L. Lansing, known to me to be the secretary of the Southern Pacific Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, this twenty-fifth day of August, A. D. 1888.

J. F. KINGWELL,
Notary public in and for the city and county of San Francisco, State of California.

[Seal]

City and County of New York, } ss.
State of New York. }

On this seventh day of September, in the year 1888, before me, Charles Edgar Mills, a commissioner of the State of California, in and for the State of New York, residing in said city of New York, personally appeared E. Francis Hyde and Benjamin G. Mitchell, known to me to be the second vice-president and assistant secretary of the cor-

poration that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this seventh day of September, A. D. 1888.

CHARLES EDGAR MILLS,
Commissioner for California in New York, 115 and 117 Broadway, New York city.

[Seal]

[Endorsed]: Southern Pacific Railroad Company, of the first part, Southern Pacific Company, of the second part, and Central Trust Company of New York, of the third part. Deed of trust. Dated August 25, 1888.

Recorded at the request of H. D. La Motte, Oct. 2, A. D. 1888, at 30 minutes past 4 P. M., in Liber No. 21 of Mortgages, page 10, records of San Mateo county, California.

E. EIKERENKOTTER,
Recorder.
By Claude Fox,
Deputy Recorder.

Recorded at request of H. D. La Motte, in Book 84 of Mortgages, page 319, et seq., Oct. 3, 1888, at 14 min. past 9 o'clock A. M., records of Santa Clara county, California.

CHAS. P. OWEN,
County Recorder.

Pd. $19.00.

Filed for record at the request of H. D. La Motte, Oct. 3, A. D. 1888, at 1 o'clock P. M., and recorded in Volume 1 of Trust Deeds, page 123, San Benito county records.

Pd. $19.

R. SHAW,
Recorder.
By Robt. Shaw,
Deputy Recorder.

Filed for record at the request of H. D. La Motte, Oct. 4, A. D. 1888, at 9 o'clock A. M., and recorded in Volume 54 of Mortgages, page 83, Oct. 4, 1888, Santa Cruz county records.

Pd. $19.

ED. MARTIN,
County Recorder.

Recorded at the request of H. D. La Motte, Oct. 4, 1888, at —— minutes past 2 P. M., in Record A of Trust Deeds, page 409, Monterey county, California.

Recorder's Fees, $19.00.

DAVID WALLACE,
County Recorder.

Recorded at request of H. D. La Motte, Oct. 6, 1888, at 30 minutes past 8 o'clock A. M., in Book P of Mortgages, at page 513, et seq., San Luis Obispo county records.

$18.50.

F. E. DARKE,
Recorder.
By F. E. Darke, Jr.,
Deputy.

[Seal]

Recorded at request of H. D. La Motte, at 25 minutes past 10 A. M., Oct. 8, 1888, in Book W of Mortgages, page No. 1, records of Santa Barbara county, California.

Pd. $18.50.

C. A. STEWART,
County Recorder.

Recorded at the request of H. D. La Motte, Oct. 9, A. D. 1888, at 8 minutes past 9 o'clock A. M., in Book 11 of Mortgages, page 56, records of Ventura county, California.

$16.75 Pd.

L. F. EASTIN,
County Recorder.
By Fred. Hund,
Deputy Recorder.

Recorded at request of H. D. La Motte, Oct. 10, 1888, at 48 minutes past 8 A. M., in Book 179, page 74, of Mortgages, Los Angeles county records.

Fees, $12.90.

FRANK A. GIBSON,
County Recorder.
By Arthur Bray,
Deputy.

Recorded at request of H. D. La Motte, Oct. 11, 1888, at 8 minutes past 8 A. M., in Book 11 of Mortgages, page 129, records of San Bernardino county.

$18.50, Paid.

LEGARE ALLEN,
County Recorder.
By Gordon G. Ives,
Deputy Recorder.

Received for record Oct. 12, 1888, at 9 o'clock A. M., at request of H. D. La Motte, and recorded in Book No. 43 of Mortgages, page 1, et seq., San Diego county, California.

Fees, $23.50, pd. Comparing, 3. $26.50, pd.

E. G. HAIGHT,
County Recorder.
By B. F. Moore,
Deputy.

Recorded at request of H. D. La Motte, Oct. 13, 1888, at 25 minutes past 9 o'clock A. M., in Book 8 of Mortgages, page 376, records of Kern county.

Fees, $20.00, paid.

N. R. PACKARD,
County Recorder.
By F. A. Shedd,
Deputy.

Recorded at request of H. D. La Motte, at 43 minutes past 7 A. M., October 15, 1888, in Volume 4 of Trust Deeds, page 446, et seq., records of Tulare county, California.

Fees, $20.00, pd.

W. F. THOMAS,
County Recorder.

Recorded at request of H. D. La Motte, at 45 minutes past 1 P. M., Oct. 15, 1888, in Volume 86 of Deeds of Fresno county records, pp. 195, et seq.

$20.

C. L. WAINWRIGHT,
Recorder.

Recorded at request of H. D. La Motte, October 16, 1888, at 40 minutes past 8 A. M., in Book P of Mortgages, page 106, records of Merced county.

$20.00, paid.

J. G. ELLIOTT,
County Recorder.

Recorded at request of H. D. La Motte, October 16, 1888, at 25 minutes past 1 P. M. in Liber 35, Deeds of Trust, page 65, records of Stanislaus county.

Fees, $10.50.

C. S. ABBOTT,
County Recorder.
By E. E. Howard,
Deputy.

Recorded at request of H. D. La Motte, October 17, 1888, at 40 minutes past 12 o'clock M., in Book N of Mortgages, page ——, Calaveras county records.

$20.00.

A. L. WYLLIE,
Recorder.
By Edw. Casey,
Deputy.

Recorded at request of H. D. La Motte, October 18, 1888, at 35 minutes past 10 o'clock A. M., in Book A, Volume 64, page 458, of Deeds, San Joaquin county records.

$20.00, paid.

J. F. MOSELEY,
County Recorder.
By G. E. Housken,
Deputy.

[Seal]

Recorded at request of H. D. La Motte, October 18, A. D., 1888, at 30 minutes past 4 P. M., in Volume 54 of Deeds, page 267, records of Contra Costa county.

$17.50, pd.

C. S. COUSINS,
County Recorder.
By A. E. Dunkel,
Deputy Recorder.

Recorded in the office of the county recorder of the city and county of San Francisco, Oct. 24, 1888, at 45 minutes past 9 o'clock A. M., in Liber 1320 of Deeds, page 85.

A. T. SPOTTS,
County Recorder.
By C. H. McCourtney,
Deputy.

Recorded Oct. 26, 1888, at 46 minutes past 3 P. M., in Liber 302 of Mortgages, page 1, records of Alameda county.

F. D. HINDS,
County Recorder.

Recorded in the office of the county recorder of the city and county of San Francisco, Oct. 27, 1888, at 25 minutes past 10 o'clock A. M., in Liber 890 of Mortgages, page 283.

A. T. SPOTTS,
County Recorder.

[Endorsed]: Deed of trust. Southern Pacific Railroad Company, of the first part, Southern Pacific Company, of the second part, and Central Trust Company of New York, of the third part. Dated August 25, 1888. Filed Jan. 22, 1895. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, and Others,
Defendants.
No. 600.

Replication of the United States to Answer of Defendants.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,
Special assistant United States attorney, and of counsel for Complaintant.

JOSEPH H. CALL,
Special assistant United States attorney, and of counsel for Complaintant.

[Endorsed]: No. 600. In the United States Circuit Court, Southern District of California. United States of America, complainant, vs. Southern Pacific Railroad Co. et al., defendants.

Due service hereof admitted by copy this twenty-third day of January, 1895. Joseph D. Redding, solicitor for said defendant.

Filed Jan. 23, 1895. Wm. M. Van Dyke, Clerk. Joseph H. Call, special assistant United States attorney.—Daily Journal Print.

At a stated term, towit, the January term, A. D. 1896, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles on Friday, the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and ninety-six. Present: The Honorable OLIN WELLBORN, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, et al.,
Defendants,
} No. 600.

Order.

This cause coming on this day for hearing and argument before the Courst, now, pursuant to the stipulation

signed by Joseph H. Call, Esq., attorney for complainants, and Wm. Singer, Jr., Esq., attorney for defendants, which said stipulation has heretofore been filed herein, and on motion of George J. Denis, Esq., United States attorney for the Southern District of California, of counsel for complainants, it is ordered that the order of court submitting said cause for argument for May twenty-ninth be, and the same hereby is vacated; that complainants, if so advised, may, on or before May 30 next, file an amended or amended and supplementary bill of complaint, making other parties defendants, and if such bill shall be filed, that defendants shall have thirty (30) days thereafter in which to file their answer thereto. It is further ordered that if such amended bill shall not be filed by complainants within the time specified, that the application of the present defendants for leave to file their amended and supplementary answer shall be heard upon the fifteenth day of June, next, and that five (5) days prior to such hearing the defendants will serve upon counsel for the government a copy of such proposed amended and supplementary answer.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court May 29, 1896, in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this sixth day of June, A. D. 1898.

[Seal of the Court.] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Certified copy order vacating order, setting for hearing, and allowing filing of amended or supplementary bill. Filed June 6, 1898. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

IN EQUITY.

THE UNITED STATES OF AMERICA,
Plaintiffs,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and CENTRAL TRUST COMPANY OF NEW YORK,
Defendants.
No. 600.

Amendments to Answer.

With leave of the Court heretofore granted, the defendants amend their answer on file herein, as follows:

First. In line 16, of page 16, after "cisco" and before the semicolon, by inserting:

, and was granted a right of way to the extent of one hundred feet in width on each side of said railroad, including all necessary grounds for station-buildings, workshops, depots, machine-shops, switches, sidetracks, turntables and water-stations.

Second. In line 3, of page 21, after the word "adopt" and before the semicolon, by inserting:

, and was granted a right of way to the extent of one hundred feet in width on each side of said railroad, including all necessary grounds for station-buildings, workshops, depots, machineshops, switches, sidetracks, turntables and water-stations.

WM. SINGER, Jr.,
Attorney for the defendants.

WM. F. HERRIN,
Counsel for the defendants.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. United States of America, plaintiffs, vs. Southern Pacific Railroad Co. et al., defendants. Amendments to answer.

I served a copy of the foregoing amendments to answer on Joseph H. Call, personally, on April 24, 1896.

WM. SINGER, Jr.

Subscribed and sworn to before me June 11, 1896.

E. B. RYAN,
[Notarial Seal.] Notary Public.

Filed June 13, 1896. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., Rooms 61-2, Union Trust building, San Francisco, Cal., attorney for defendants.

In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

THE UNITED STATES OF AMERICA, Plaintiffs,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and CENTRAL TRUST COMPANY OF NEW YORK, Defendants. } No. 600

Notice of Motion for Leave to File Supplemental Answer.

To George J. Denis, United States attorney, and Joseph H. Call, Esq., special assistant United States attorney:

Please take notice that on ———, April ——, 1896, at 10:30 o'clock A. M., we will ask the Court for an order granting the defendants leave to file a supplemental answer herein, as prayed in their petition, a copy of which is hereto attached.

The motion for the order prayed will be based on the said petition, and the exhibit thereto.

Dated and signed April 17, 1896.

WM. SINGER, Jr.,
Attorney for the defendants.

WM. F. HERRIN,
Counsel for the defendants.

In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and CENTRAL TRUST COMPANY OF NEW YORK,
Defendants.

No. 600.

Petition for Leave to File Supplemental Answer.

To the Judges of the Circuit Court of the United States, for the Southern District of California:

Your petitioners, the defendants above named, by Wm. Singer, Jr., their attorney, respectfully show as follows:

This suit was brought in behalf of the plaintiffs on May 14, 1894, to quiet title to lands described in "Exhibit A," attached to and made part of the plaintiff's bill of complaint, and to obtain the decree of this Court vacating and annulling all patents issued by the United States conveying to the defendant Southern Pacific Railroad Company any of the said lands; but the bill of complaint does not, in any way, describe the patents which it seeks to have vacated and annulled, nor the particular lands conveyed by such patents.

Prior to the time the said bill of complaint was filed, patents had been issued by the United States conveying to the defendant Southern Pacific Railroad Company, about thirty thousand acres of lands described in the said "Exhibit A"; and thereafter, on July 10, 1894, but before your petitioners, the defendants, made answer to the bill of complaint, a patent was issued by the United States conveying to the said defendant company about thirteen thousand acres of the lands described in the said "Exhibit A," not included in any former patent.

On January 10, 1895, your petitioners, as defendants, filed their joint and several answer to the plaintiff's bill of complaint, and admitted and alleged therein that the United States had theretofore issued patents conveying to the defendant Southern Pacific Railroad Company about forty-three thousand acres of the lands described in the said "Exhibit A"; and thereafter they offered and filed all of said patents in this court, as evidence in this suit.

Since the issuance of the hereinbefore mentioned patents, and during the months of December, 1894, January and August, 1895, three several patents were received by the defendant Southern Pacific Railroad Company, in which the United States conveyed to it twenty-seven thousand one hundred and thirty-six acres of the lands described in the said "Exhibit A," in addition to the lands conveyed by the other patents mentioned.

After your petitioners', the defendants', answer was filed, and all the said patents had issued, the Congress of the United States passed an act entitled (Public, No. 35)

"An act to provide for the extension of the time within which suits may be brought to vacate and annul land patents, and for other purposes"; which act was approved on March 2, 1896. A copy of the said act is hereto attached, marked "Exhibit No. 1," and made part of this petition, the first section of which act provides, among other things, that "no patent to any lands held by a bona fide purchaser shall be vacated or annulled." Your petitioners beg leave to exhibit a properly certified copy of the said act at the hearing of this petition.

Before this suit was brought, or demand made for reconveyance of any of the lands described in the said "Exhibit A," your petitioners sold fifty-seven thousand seven hundred and eleven and seventeen one-hundredths acres of the lands described in the said "Exhibit A," and conveyed to the Southern Pacific Railroad Company by the hereinbefore mentioned patents. The quantity, fifty-seven thousand seven hundred and eleven and seventeen one-hundredths acres, is the aggregate area of the lands so sold in three hundred and thirty-seven several and separate sales; each of which sales was for a valuable consideration paid, and made to a person whom your petitioners are informed and believe purchased the lands of such sale in good faith and sincerity, believing in the validity of the title so purchased. Your petitioners are informed and believe, and so say, that at all the times when a demand for reconveyance to the United States was made, when this suit was brought, and when the said act of Congress was passed, each of said purchasers was, and still is, a bona fide purchaser and holder of the said lands of their respective purchases.

Your petitioners are advised and believe that by force and virtue of the said act of March 2, 1896, no patent issued to the said Southern Pacific Railroad Company for land held by a bona fide purchaser, can be properly annulled or vacated; and that as to all such patents the matter in litigation has been settled by the force and effect of the said act. Your petitioners show that they could not have set up the matter of defense arising out of the said act in their answer, because the said act was passed long after they were required to and did file their answer; and great hardship will result to them, and to their said purchasers, unless your petitioners are permitted to file their supplemental answer, for which leave is herein prayed.

Wherefore your petitioners pray leave of this Court to file their supplemental answer showing the said patents received by the defendant Southern Pacific Railroad Company during the months of December, 1894, January and August, 1896, conveying to it twenty-seven thousand one hundred and thirty-six acres as aforesaid; and showing, with the dates and full particulars thereof, all sales made by your petitioners of lands described in the said "Exhibit A," patented by the United States to the said Southern Pacific Railroad Company, and held by the bona fide purchase aforesaid.

Your petitioners beg leave to exhibit the patents conveying to the Southern Pacific Railroad Companythe said twenty-seven thousand one hundred and thirty-six acres, at the hearing of this petition; and to exhibit, at the same time, a tabular statement made by the land agent of the

Southern Pacific Railroad Company, showing the sales made by your petitioners of lands patented by the United States to the said company.

WM. SINGER, Jr.,
Attorney for the Defendants.

WM. F. HERRIN,
Counsel for the Defendants.

City and County of San Francisco, } ss.
State of California. }

J. L. Willcutt, being duly sworn, deposes and says: that he is the Secretary of the Southern Pacific Railroad Company, one of the petitioners to the foregoing petition; that the foregoing petition is true of his own knowledge, except as to the matters *as* things therein stated on information or belief, and as to such matters he believes it to be true; and that the foregoing petition is not interposed for delay.

J. L. WILLCUTT.

Sworn to and subscribed before me April 17, 1896.

E. B. RYAN,
Notary public in and for the city and county of San Francisco, State of California.

[Seal]

EXHIBIT NO. 1.

(Public—No. 35.)

An act to provide for the extension of the time within which suits may be brought to vacate and annul land patents, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress and amendments thereto is extended accordingly as to the patents herein referred to. But no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed: provided, that no suit shall be brought or maintained, nor shall recovery be had for lands or the value thereof, that were certified or patented in lieu of other lands covered by a grant which were lost or relinquished by the grantee in consequence of the failure of the government or its officers to withdraw the same from sale or entry.

Sec. 2. That if any person claiming to be a bona fide purchaser of any lands erroneously patented or certified shall present his claim to the secretary of the interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a bona fide purchaser, the secretary of the interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons for whose benefit the certification was made, for the value

of said land, which in no case shall be more than the minimum government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the secretary of the interior on the bona fides of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a bona fide purchaser, but who has not submitted his claim to the secretary of the interior, is made a party to such suit, and if found by the court to be a bona fide purchaser, the Court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons for whose benefit the certification was made for the value of the lands as hereinbefore provided. Any bona fide purchaser of lands patented or certified to a railroad company, and who is not made a party to such suit, and submitted his claim to the secretary of the interior, may establish his right as such bona fide purchaser in any United States court having jurisdiction of the subject matter, or at his option, as prescribed in sections three and four of chapter three hundred and seventy-six of the acts of the second session of the Forty-ninth Congress.

Sec. 3. That if at any time prior to the institution of suit by the attorney-general to cancel any patent or certification of lands erroneously patented or certified, a claim or statement is presented to the secretary of the interior by or on behalf of any person or persons, corporation or corporations, claiming that such person or persons, corporation or corporations, is a bona fide purchaser or are bona fide purchasers of any patented or certified

land by deed or contract, or otherwise, from or through the original patentee or corporation to which patent or certification was issued, no suit or action shall be brought to cancel or annul the patent or certification for said land until such claim is investigated in said department of the interior; and if it shall appear that such person or corporation is a bona fide purchaser as aforesaid, or that such persons or corporations are such bona fide purchasers, then no such suit shall be instituted and the title of such claimant or claimants shall stand confirmed; but the secretary of the interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons for whose benefit the patent was issued or certification was made for the value of the land as hereinbefore specified.

Approved, March 2, 1896.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Railroad Co. et al. Notice and petition of defendants to file supplemental answer.

I served a copy of this notice and petition of the defendants to file supplemental answer, on Joseph H. Call, personally, on April 24, 1896.

WM. SINGER, Jr.

Subscribed and sworn to before me June 11, 1896.

E. B. RYAN,
Notary public.

[Seal]

Filed June 13, 1896. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., rooms 61-2, Union Trust Building, San Francisco, Cal., attorney for defendants.

At a stated term, towit, the January term, A. D. 1896, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles on Monday, the twentieth day of July, in the year of our Lord one thousand eight hundred and ninety-six, Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 600.

Order Substituting Parties Defendant.

Now comes Joseph H. Call, Esq., special assistant United States attorney, of counsel for complainants in said cause, and suggests to the Court the death of Gerrit L. Lansing, one of the defendants in said cause, whereupon, on motion of said Joseph H. Call, Esq., of counsel as aforesaid, it is ordered that Homer S. King, trustee, be and he hereby is substituted as party defendant in the place and stead of Gerrit L. Lansing, trustee, deceased.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the

United States, for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said Court July 20, 1896, in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and remaining of record therein.

Attest my hand and the seal of said Circuit Court this sixth day of June, A. D. 1898.

WM. M. VAN DYKE,
Clerk.

[Seal of Court.]

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. United States of America vs. The Southern Pacific Railroad Company et al. Certified copy order substituting Homer S. King, trustee, as party defendant instead of Gerrit L. Lansing, trustee, deceased. Filed June 6, 1898. Wm. M. Van Dyke, Clerk.

At a stated term, towit, the January term, A. D. 1896, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles on Monday, the twentieth day of July, in the year of our Lord one thousand eight hundred and ninety-six. Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 600.

Order Allowing Leave to Amend Answer, etc..

This cause coming on this day to be heard on the motion of defendants for an order granting defendants leave to amend their answer herein, Joseph H. Call, Esq., special assistant United States attorney, appearing as counsel for complainants, and Wm. Singer, Jr., Esq., appearing as counsel for defendants, and counsel for complainants having consented to the granting of said motion, it is now ordered that said motion be and the same hereby is granted; it is further ordered, on motion of Joseph H. Call, Esq., of counsel as aforesaid, for complainants, that complainants' replication to the answer now on file herein stand as and be considered complainant's replication to the amended answer; it is further ordered that the testimony heretofore taken and filed in this cause under the issue joined therein stand and be considered as taken under the issue joined on the amended answer.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said Court July 20, 1896, in the cause entitled "The United

States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and remaining of record therein.

Attest my hand and the seal of said Circuit Court this sixth day of June, A. D. 1898.

WM. M. VAN DYKE,
Clerk.

[Seal of Court.]

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Certified copy order allowing defendants leave to amend their answer and that complainants' replication on file stand as the replication to the amended answer. Filed June 6, 1898. Wm. M. Van Dyke, Clerk.

At a stated term, towit, the January term, A. D. 1896, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles on Monday the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and ninety-six. Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 600.

Order Allowing Defendants to File Supplemental Answer, etc

This cause having heretofore been submitted to the Court for its consideration and decision on the petition of defendants for an order granting the defendants leave to file a supplemental answer herein, and the Court having duly considered the same and being fully advised in the premises, it is now on this twenty-seventh day of July, 1896, being a day in the January term, A. D. 1896, of said Circuit Court of the United States for the Southern District of California, ordered that said petition be and the same hereby is granted, and said supplemental answer allowed to be filed herein. It is further ordered, on motion of Joseph H. Call, Esq., special assistant United States attorney, of counsel for complainants, that complainants' replication to the answer now on file herein stand as and be considered complainants' replication to the supplemental answer. It is further ordered that the testimony heretofore taken and filed in this cause, under the issue joined therein, stand and be considered as taken under the issue joined on the supplemental answer. It is further ordered on motion of Joseph H. Call, Esq., of counsel as aforesaid, that twenty (20) days be and hereby are allowed as time within which further testimony may

be taken on behalf of either party under the issues joined herein. It is further ordered on motion of Joseph H. Call, Esq., of counsel as aforesaid, that complainants' exception be and the same hereby is entered to the ruling of the Court allowing the filing of said supplemental answer.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said Court July 27, 1896, in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and remaining of record therein.

Attest my hand and the seal of said Circuit Court this sixth day of June, A. D. 1898.

WM. M. VAN DYKE,
Clerk.

[Seal of Court.]

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Certified copy order allowing defendants to file a supplemental answer and that complainants' replication now on file stand as a replication to the supplemental answer. Filed June 6, 1898. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and THE CENTRAL TRUST COMPANY OF NEW YORK,
Defendants.

No. 600.

Supplemental Answer.

The joint and several supplemental answer of the defendants the Southern Pacific Railroad Company, D. O. Mills, trustee, and the Central Trust Company of New York, filed by leave of the Court, to the plaintiffs' bill of complaint as amended.

These defendants, the Southern Pacific Railroad Company, D. O. Mills, trustee, and the Central Trust Company of New York, respectively, by leave of the Court, file this their joint and several answer to the plaintiffs' bill of complaint as amended, and say:

First. That on February 4, 1896, and since the answer of the defendants was filed, the defendant Gerrit L. Lansing died, and on March 21, 1896, one Homer S. King was duly substituted for the said Lansing, as a trustee under the mortgage set forth in subdivision XII of the defendant's answer herein.

Second. Prior to the time plaintiffs' bill of complaint was filed, the United States duly issued its patents conveying to the defendant Southern Pacific Railroad Com-*pany the legal title to certain of the lands described in* the plaintiffs' bill of complaint; and since the said bill was filed the United States duly issued its patents conveying to the said company the legal title to certain other lands described in the said *bill of complaint,* which other lands contain thirty-nine thousand nine hundred and forty-four acres.

All the lands so patented are within the limits of the land grants made to the defendant the Southern Pacific Railroad Company by the acts of Congress set forth in the defendants' original answer, and none of the said lands were, or are, excepted from the said grants by any cause; and all of those lands were granted to the said company by the acts of Congress mentioned. Before the said patents, or any of them, issued, the said company duly selected the lands in such patent described, under the direction of the secretary of the interior, and paid all the costs of selecting, surveying, and patenting the same; and the said company was in all respects entitled thereto, at the time the said patents were respectively issued. Each of the said patents issued in proper form, after the commissioner of the general land office and the secretary of the interior had duly examined, ascertained, and adjudged that the lands therein described constituted and were part and parcel of the land grant made by the said acts,

Opposite the matter between stars appears the following: "Aug. 31, 1896. Wm. M. V. D. Clk."

not included by any exception thereto, and after the said officers had duly examined, ascertained, and adjudged that such lands had been duly selected by the said company, that all costs of selecting, surveying, and patenting had been paid, and that the said company was fully entitled to the issue of such patent; and each of the said patents was so issued in pursuance of the order and direction of the secretary of the interior and the President of the United States. Some of the said lands are within the primary limits, and the remainder thereof are within the indemnity limits of the said land grants to the Southern Pacific Railroad Company.

Before this suit was commenced, or demand made for reconveyance to the United States of any of the lands patented as aforesaid, the defendant Southern Pacific Railroad Company sold, and issued contracts and deeds of conveyance for, fifty-seven thousand seven hundred and eleven acres of the lands conveyed to it by the said patents; the full particulars of which sales, contracts and deeds, and short particulars of the patents conveying to the said company the lands so sold, are set forth in "Exhibit A," attached to and made a part of this supplemental answer. Such sales were made, and contracts and deeds issued, to bona fide purchasers, each of whom purchased in good faith, for a valuable consideration paid, without notice or knowledge that the United States had, or claimed to have, any right, title, or interest in or to the lands so purchased, or any part thereof; and each of the said purchasers believed, sincerely and in good faith, that in making such purchase he was acquiring the

perfect and true title to the lands purchased. All of the lands shown on "Exhibit A," hereto attched, to have been sold, or contracted for sale are, at the time this suit was brought, and on March 2nd, 1896, were, held by bona fide purchasers.

By its act approved March 2, 1896, entitled "An act to provide for the extension of the time within which suits may be brought to annul land patents, and for other purposes," Congress provided that no patent to any land held by a bona fide purchaser should be vacated or annulled, and confirmed the right and title conveyed by such patents; and these defendants are advised and believe, and so say, that if it were in any wise true (which it is not) that the lands patented and sold as aforesaid were reserved from the lands granted to the defendant Southern Pacific Railroad Company by the said acts of Congress, as in the plaintiffs' bill of complaint alleged, still this suit cannot be maintained but is barred as to all such patented and sold lands, by the provisions of the first section of the said act of March 2, 1896.

Third. Prior to the commencement of this suit the plaintiffs demanded of it, and the defendant Southern Pacific Railroad Company paid to the plaintiffs, the sum of three thousand five hundred dollars for the costs of surveying and patenting the said lands patented to it as aforesaid; which sum the plaintiffs have retained and appropriated, and they have not at any time requested a reconveyance to the United States of any of the said patented lands.

Wherefore these defendants pray as in their original answer herein; and that this suit be abated as to all the

lands described in "Exhibit A," attached hereto, and for general relief in respect of the matters herein set forth.

WM. SINGER, Jr.,
Attorney for the said defendants.

WM. F. HERRIN,
Counsel for the said defendants.

City and County of San Francisco, } ss.
State of California. }

H. E. Huntington, being duly sworn, deposes and says: That he is the vice-president of the Southern Pacific Railroad Company, one of the defendants named in the foregoing supplemental answer; that the said supplemental answer is true of his own knowledge, except as to the matters and things therein stated on information or belief, and as to such matters that he believes it to be true.

H. E. HUNTINGTON.

Sworn to and subscribed before me July 14, 1896.

E. B. RYAN,
Notary public.

[Seal]

Contract No. 2418.

Issued Sept. 23, 1882, to Geo. Chaffey, Jr., and W. B. Chaffey, for the fractional northeast one-quarter of section 5, township 1 south, range 6 west, S. B. M., containing 167 acres. Agreed purchase price $———. Purchase price paid $584.50; interest paid, $———. Deed issued Oct. 5, 1882, to Geo. Chaffey, Jr., and W. B. Chaffey. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 2627.

Issued Dec. 20, 1882, to Geo. Chaffey, Jr., and W. B. Chaffey, for the northwest one-quarter of section 9, township 1 south, range 6 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $753.06; interest paid, $———. Deed issued July 18, 1887, to Geo. Chaffey, Jr., and W. B. Chaffey. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 2338.

Issued June 30, 1882, to M. L. Wicks, for the north one-half of section 21, township 1 south, range 7 west, S. B. M., containing 320 acres. Agreed purchase price $———. Purchase price paid $1,797.45; interest paid, $———. Deed issued Aug. 8th, 1887, to Pomona Land & Water Co. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 2319.

Issued May 18, 1882, to M. L. Wicks, for the south one-half of section 21, township 1 south, range 7 west, S. B. M., containing 320 acres. Agreed purchase price $———. Purchase price paid $1749.74; interest paid, $———. Deed issued Nov. 18, 1886, to Pomona Land & Water Co. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 2606.

Issued Dec. 2, 1882, to Mrs. E. H. Baker, for the east one-half of northeast one-quarter and east one-half of southeast one-quarter of section 1, township 1 south, range 8

west, S. B. M.,containing 160 04-100 acres. Agreed purchase price $———. Purchase price paid $443.62; interest paid, $———. Deed issued Dec. 12, 1883, to Henry B. Botsford. Present owner of contract,————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 2976.

Issued Dec. 26, 1882, to C. T. Mills, for the west one-half of northeast one-quarter; west one-half of southeast one-quarter and west one-half of section 1, township 1 south, range 8 west, S. B. M., containing 480 56-100 acres. Agreed purchase price $———. Purchase price paid $1,737.10; interest paid, $———. Deed issued Aug. 7, 1888, to Pomona Land & Water Co. Present owner of contract, ————. Patent No. 2. Issued Apr. 4, 1879, for the land described above.

Contract No. 2338.

Issued June 30, 1882, to M. L. Wicks, for all of section 11, township 1 south, range 8 west, S. B. M., containing 640 acres. Agreed purchase price $———. Purchase price paid $2,156.92; interest paid, $———. Deed issued Aug. 8, 1887, to Pomona Land & Water Co. Present owner of contract, ————. Patent No. 2. Issued Apr. 4, 1879, for the land described above.

Contract No. 2319.

Issued May 18, 1882, to M.L. Wicks, for all fractional section 15, township 1 south, range 8 west, S. B. M., containing 416 acres. Agreed purchase price $———. Purchase price paid $1,364.80; interest paid, $———. Deed is-

sued Nov. 18, 1886, to Pomona Land & Water Co. Present owner of contract, ————. Patent No. 2. Issued Apr. 4, 1879, for the land described above.

Contract No. 2305.

Issued May 4, 1882, to M. L. Wicks, for lots 1 and two of section 21, township 1 south, range 8 west, S. B. M., containing 32 10-100 acres. Agreed purchase price $———. Purchase price paid $207.45; interest paid, $———. Deed issued Aug. 8, 1887, to Pomona Land & Water Co. Present owner of contract, ————. Patent No. 2. Issued Apr. 4, 1879, for the land described above.

Contract No. 2319.

Issued May 18, 1882, to M. L. Wicks, for the north one-half of northeast one-quarter of section 23, township 1, south, range 8 west, S. B. M., containing 80 00-100 acres. Agreed purchase price $———. Purchase price paid $499.93; interest paid, $———. Deed issued Nov. 18, 1886, to Pomona Land & Water Co. Present owner of contract, ————. Patent No. 2. Issued Apr. 4, 1879, for the land described above.

Contract No. 2305.

Issued May 4, 1882, to M. L. Wicks, for lots 1, 2, 3 and 4 of section 25, township 1 south, range 8 west, S. B. M., containing 138 34-100 acres. Agreed purchase price $———. Purchase price paid, $670.55; interest paid, $———. Deed issued Aug. 8, 1887, to Pomona Land & Water Co. Present owner of contract, ————. Patent No. 2. Issued Apr. 4, 1879, for the land described above.

Contract No. 2305.

Issued May 4, 1882, to M. L. Wicks, for the south one-half of southeast one-quarter and south one-half of southwest one-quarter of section 27, township 1 south, range 8 west, S. B. M., containing 160 00-100 acres. Agreed purchase price $———. Purchase price paid $775.56; interest paid, $———. Deed issued Aug. 8, 1887, to Pomona Land & Water Co. Present owner of contract, ———. Patent No. 2. Issued Apr. 4, 1879, for the land described above.

Contract No. 3083.

Issued Jan. 24, 1884, to C. M. Wright, for lots 6 and 7 of section 33, township 1 south, range 9 west, S. B. M., containing 48 16-100 acres. Agreed purchase price $———. Purchase price paid $624.32; interest paid, $———. Deed issued May 17, 1889, to C. M. Wright. Present owner of contract, ———. Patent No. 2. Issued Apr. 4, 1879, for the land described above.

Contract No. 3082.

Issued Jan. 24, 1884, to D. H. Collins, for lot 5 of section 33, township 1 south, range 9 west, S. B. M., containing 31 79-100 acres. Agreed purchase price $1641.50. Purchase price paid $205.98; interest paid, $735.36. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 2. Issued Apr. 4, 1879, for the land described above.

Contract No. 3435.

Issued Apr. 17, 1884, to J. F. Griffith, for the south one-half of southwest one-quarter and lots 1, 2, 3 and 4 of sec-

tion 35, township 1 south, range 9 west, containing 176 00-100 acres. Agreed purchase price $———. Purchase price paid $1,129.30; interest paid, $———. Deed issued May 17, 1889, to C. M. Wright and Jane Lynch. Present owner of contract, ————————. Patent No. 1. Issued April 14, 1879, for the land described above.

Contract No. 9141.

Issued Jan. 5, 1888, to R. W. Morse, for lot 1 of section 1, township 1 south, range 11 west, S. B. M., containing 14 97-100 acres. Agreed purchase price $———. Purchase price paid $74.85; interest paid, $———. Deed issued Feb. 1, 1888, to R. W. Morse. Present owner of contract, ————————. Patent No. 1. Issued Mar. 28, 1876, for the land described above.

Contract No. 2538.

Issued Oct. 30, 1882, to L. J. Rose, for lot 1 of northwest one-quarter of section 7, township 1 south, range 11 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $1,400.00; interest paid, $———. Deed issued Nov. 8, 1882, to L. J. Rose. Present owner of contract, ————————. Patent No. 4. Issued June 26, 1882, for the land described above.

Contract No. 2640.

Issued Jan. 8, 1883, to T. W. Corder, for lot 5 of southeast one-quarter of section 7, township 1 south, range 11 W., S. B. M., containing 10 83-100 acres. Agreed purchase price $———. Purchase price paid $216.60; interest paid, $———. Deed issued Jan. 9, 1883, to T. W. Corder. Pres-

ent owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 2509.

Issued Oct. 24, 1882, to Thomas Pollard, for lot 6 of southeast one-quarter of section 7, township 1 south, range 11 west, S. B. M., containing 10 65-100 acres. Agreed purchase price $———. Purchase price paid $213.00; interest paid, $———. Deed issued Oct. 27, 1882, to Thomas Pollard. Present owner of contract,———. Patent No. 2. Issued Apr. 4, 1879, for the land described above.

Contract No. 1638.

Issued Nov. 2, 1881, to Thomas Pollard, for lots 7 and 8 of northeast one-quarter of section 7, township 1 south, range 11 west, S. B. M., containing 20 76-100 acres. Agreed purchase price $———. Purchase price paid $415.20; interest paid, $———. Deed issued Nov. 28, 1881, to Thomas Pollard. Present owner of contract, ————. Patent No. 2. Issued Apr. 4, 1879, for the land described above.

Contract No. 2062.

Issued Jan. 23, 1882, to Austin Brown, for the east one-half of northeast one-quarter and lot 6 of section 13, township 1 south, range 11 west, S. B. M., containing 107 86-100 acres. Agreed purchase price $———. Purchase price paid $414.19; interest paid, $———. Deed issued Nov. 26, 1884, to Austin Brown. Present owner of contract, ————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 2930.

Issued Dec. 10, 1883, to Milton Santee, for the west one-half of northeast one-quarter; east one-half of northwest one-quarter; north one-half of southwest one-quarter and lots 1, 2, 3, 4 and 5 of section 13, township 1 south, range 11 west, S. B. M., containing 373 68-100 acres. Agreed purchase price $———. Purchase price paid $1,196.46; interest paid, $———. Deed issued Dec. 20, 1888, to Homer Santee. Present owner of contract, ————. Patent No. 1. Issued Mar. 29, 1876, for the land described above.

Contract No. 545.

Issued April 16, 1877, to Solomon Richardson, for lot 1 of section 3, township 1 south, range 12 west, S. B. M., containing 17 31-100 acres. Agreed purchase price $———. Purchase price paid $432.75; interest paid,$———. Deed issued Apr. 21, 1877, to Solomon Richardson. Present owner of contract, ————. Patent No. 1. Issued Mar. 29, 1876, for the land described above.

Contract No. 544.

Issued Mar. 28, 1877, to B. D. Wilson, for lot 5 of section 3, township 1 south, range 12 west, S. B. M., containing 2 45-100 acres. Agreed purchase price $———. Purchase price paid $97.00; interest paid, $———. Deed issued Mar. 29, 1877, to B. D. Wilson. Present owner of contract, ————. Patent No. 1. Issued Mar. 29, 1876, for the land described above.

Contract No. 3812.

Issued July 17, 1884, to P. Wilhelm Poulson, for lots 2 and 3 of section 5, township 1 south, range 12 west, S. B.

M., containing 6 87-100 acres. Agreed purchase price $———. Purchase price paid $20.61; interest paid, $———. Deed issued July 17, 1884, to P. Wilhelm Poulson. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 748.

Issued Sept. 30, 1879, to Hancock M. Johnston, for the northeast one-quarter of section 7, township 1 south, range 12 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $660.80; interest paid, $———. Deed issued July 11, 1884, to Hancock M. Johnston. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 470.

Issued Dec. 8, 1876, to Hancock M. Johnston, for northeast one-quarter of southwest one-quarter of section 7, township 1 south, range 12 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $194.88; interest paid, $———. Deed issued July 10, 1883, to Hancock M. Johnston. Present owner of contract, ————————. Patent No. 1. Issued Mar. 29, 1876, for the land described above.

Contract No. 2584.

Issued Nov. 18, 1882, to H. M. Johnston, for lots 3 and 4 of section 7, township 1 south, range 12 west, S. B. M., containing 83 16-100 acres. Agreed purchase price $———. Purchase price paid $543.20; interest paid, $———. Deed issued June 24, 1884, to H. M. Johnston. Present

owner of contract, ————. Patent No. 4. Issued June 26, 1882, for the land described above.

Contract No. 882.

Issued Oct. 14, 1880, to Mrs. Alice V. Slosson, for lots 1 and 2 of section 11, township 1 south, range 12 west, S. B. M., containing 34 40-100 acres. Agreed purchase price $———. Purchase price paid $864.00; interest paid, $———. Deed issued Nov. 23, 1880, to Mrs. Alice V. Slosson. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for lot 1. Patent No. 1. Issued March 29, 1876, for lot 2, of land described above.

Contract No. 716.

Issued June 24, 1879, to Maria Jesus de Shorb, Annie Wilson and Ruth Wilson, for the northwest one-quarter of northwest one-quarter of section 11, township 1 south, range 12 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $787.00; interest paid, $———. Deed issued June 25, 1879, to Maria Jesus de Shorb, Annie Wilson and Ruth Wilson. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 810.

Issued May 17, 1880, to David F. Hall and Henry Hamilton, trustee, for the southeast one-quarter of northwest one-quarter and northeast one-quarter of southwest one-quarter of section 11, township 1 south, range 12 west, S. B. M., containing 80 00-100 acres. Agreed purchase price $———. Purchase price paid $800.00; interest paid, $———. Deed issued May 17th, 1880, to David F. Hall

and Henry Hamilton, trustee; supplemental deed issued June 16, 1880, to David F. Hall and Henry Hamilton, trustee. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 2431.

Issued Oct. 4, 1882, to Solomon Richardson, for the east one-half of northeast one-quarter of section 13, township 1 south, range 12 west, S. B. M., containing $80 00-100 acres. Agreed purchase price $——. Purchase price paid $2,496.32; interest paid, $———. Deed issued July 10, 1883, to Solomon Richardson. Present owner of contract,————————. Patent No. 2. Issued April 1879, for the land described above.

Contract No. 543.

Issued March 23, 1877, to J. de Barth Shorb, for the northeast one-quarter of section 15, township 1 south, range 12 west, S. B. M., containing 160 00-100 acres. Agreed purchase price $———. Purchase price paid $5,600.00; interest paid, $———. Deed issued Mar. 28, 1882, to the Lake Vineyard and Water Association. Present owner of contract, ————————. Patent No. 1. Issued Mar. 29, 1876, for the land described above.

Contract No. 504.

Issued Jan. 9, 1877, to Catalina Batz, for the southeast one-quarter of southeast one-quarter and northeast one-quarter of section 17, township 1 south, range 12 west, S. B. M., containing 200 00-100 acres. Agreed purchase price $———. Purchase price paid $1,400.00; interest

paid, $———. Deed issued Jan. 26, 1877, to Catalina Batz. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 506.

Issued Jan. 9, 1877, to Catalina Batz, for the northeast one-quarter of southeast one-quarter of section 17, township 1 south, range 12 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $1.00; interest paid $———. Deed issued Jan. 10, 1877, to Catalina Batz. Present owner of contract, ————————. Patent No. 1. Issued Mar. 29, 1876, for the land described above.

Contract No. 505.

Issued Jan. 9, 1877, to Catalina Batz, for the north one-half of southeast one-quarter of section 19, township 1 south, range 12 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $560.00; interest paid, $———. Deed issued Jan. 26, 1877, to Catalina Batz. Present owner of contract, ———— ————. Patent No. 1. Issued Mar. 29. 1876, for the land described above.

Contract No. 804.

Issued April 16, 1880, to James R. Brown, for the northwest one-quarter of northwest one-quarter of section 19, township 1 south, range 12 west, S. B. M., containing 42 87-100 acres. Agreed price $———. Purchase price paid $264.08; interest paid, $———. Deed issued June 12. 1882, to James R. Brown. Present owner of contract, — ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 746.

Issued Sept. 26, 1879, to Catalina Batz, for the northwest one-quarter of southwest one-quarter and north one-half of section 29, township 1 south, range 12 west, S. B. M., containing 360 acres. Agreed purchase price $———. Purchase price paid, $1,710.00; interest paid, $———. Deed issued Sept. 30, 1879, to Catalina Batz. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 747.

Issued Sept. 26, 1879, to Alexander Reppetto, for southeast one-quarter of section 29, township 1 south, range 12 west, S. B. M., containing 160 00-100 acres. Agreed purchase price $———. Purchase price paid $760.00; interest paid, $———. Deed issued Sept 30, 1879, to Alexander Reppetto. Present owner of contract, —— ——. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 1568.

Issued Oct. 27, 1881, to Jean Pedalaborde and Francico S. Pedalaborde, for the east one-half of northeast one-quarter; east one-half of southeast one-quarter and northwest one-quarter of section 31, township 1 south, range 12 west, S. B. M., containing 327 61-100 acres. Agreed purchase price $———. Purchase price paid $3,222.00; interest paid, $———; deed issued May 20, 1884, to Jean Pedalaborde and Francisco S. Pedalaborde. Present owner of contract, ————————. Patent No. 1. Issued Mar. 29, 1876, for the land described above.

Contract No. 2975.

Issued Dec. 26, 1883, to Milton Santee, for lot 1 of section 11, township 1 south, range 13 west, S. B. M., containing 19-100 acres. Agreed purchase price $———. Purchase price paid $9.00; interest paid, $———. Deed issued Feb. 5, 1884, to Milton Santee. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 470.

Issued Dec. 8, 1876, to Hancock M. Johnston, for the northeast one-quarter of northeast one-quarter; southeast one-quarter of southeast one-quarter, and lots 1 and 4 of section 13, township 1 south, range 12 west, S. B. M., containing 99 28-100 acres. Agreed purchase price $———. Purchase price paid $1,524.67; interest paid, $———. Deed issued July 10, 1883, to Hancock M. Johnston. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 2322.

Issued May 29, 1882, to James R. Brown, for lots 3 and 4 of section 25, township 1 south, range 13 west, S. B. M., containing 18 57-100 acres. Agreed purchase price paid $———. Purchase price paid $186.60; interest paid $———. Deed issued July 12, 1882, to James R. Brown. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land escribed above.

Contract No. 3615.

Issued May 26, 1884, to Charles Yoerger, for lot 10 of section 3, township 1 south, range 14 west, S. B. M., con-

taining 40 66-100 acres. Agreed purchase price $———. Purchase price paid $237.54; interest paid, $———. Deed issued June 20, 1887, to Charles Yoerger. Present owner of contract, ————. Patent No. 6. Issued December 27, 1883, for the land described above.

Contract No. 3614.

Issued May 26, 1884, to Ivar A. Weid, for the south one-half of the northeast one-quarter of section 3, township 1 south, range 14 west, S. B. M., containing 80 acres. Agreed purchase price, $———. Purchase price paid, $232.60; interest paid, $———. Deed issued May 4, 1887 to Ivar A. Weid. Present owner of contract, ————. Patent No. 6. Issued December 27, 1883, for the land described above.

Contract No. 507.

Issued January 10, 1877, to Ivar A. Weid, for the east one-half of southeast one-quarter and lots 1 and 2 of section 3, township 1, south, range 14 west, S. B. M., containing 124 53-100 acres. Agreed purchase price, $———. Purchase price paid, $563.04; interest paid, $———. Deed issued Jan. 19, 1884, to L. J. Rose. Present owner of contract, ————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 3625.

Issued May 26, 1884, to N. K. S. O'Melveny and George Allen, for the southwest one-quarter of northwest one-quarter, and lots 3, 4, 5, and 7 of section 3, township 1 south, range 14 west, S. B. M., containing 139 32-100 acres. Agreed purchase price, $———. Purchase price paid,

$442.30; interest paid, $———. Deed issued March 26, 1889, to John L. Plummer. Present owner of contract, ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3617.

Isuued May 26, 1884, to M. L. Yager, for the east one-half of southwest one-quarter, southwest one-quarter of southwest one-quarter, east one-half of northeast one-quarter, and southeast one-quarter of section 5, township 1 south, range 14 west, S. B. M., containing 360 18-100 acres. Agreed purchase price, $———. Purchase price paid, $1149.55; interest paid, $———. Deed issued May 9, 1889, to M. L. Yager. Present owner of contract, ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3616.

Issued May 26, 1884, to Oliver Johnson, for the northwest one-quarter of southwest one-quarter, west one-half of northeast one-quarter, and northwest one-quarter of section 5, township 1 south, range 14 west, S. B. M., containing 280 36-100 acres. Agreed purchase price $———. Purchase price paid $897.15; interest paid, $———. Deed issued June 3, 1889, to Oliver Johnson. Present owner of contract, ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3619.

Issued May 26, 1884, to W. H. Carlin, for the east one-half of northeast one-quarter of section 7, township 1 south, range 14 west, S. B. M., containing 80.00 acres.

Agreed purchase price $———. Purchase price paid $201.70; interest paid, $———. Deed issued August 1, 1884, to W. H. Carlin. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3618.

Issued May 26, 1884, to George Cate, for the west one-half of northeast one-quarter of section 7, township 1 south, range 14 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $244.80; interest paid, $———. Deed issued July 16, 1888, to F. B. Alderson. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3624.

Issued May 26, 1884, to Wm. W. White, for the northwest one-quarterof section 7, township 1 south, range 14 west, S. B. M., containing 160 44-100 acres. Agreed purchase price $———. Purchase price paid $338.85; interest paid, ———. Deed issued June 5, 1885, to Wm. W. White. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 481.

Issued Dec. 26, 1876, to George Cate, for the north one-half of southeast one-quarter and lot 3 of section 7, township 1 south, range 14 west, S. B. M., containing 113 33-100 acres. Agreed purchase price $———. Purchase price paid $949.41; interest paid, $———. Deed issued

Jan. 7, 1882, to George Cate. Present owner of contract, ————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 508.

Issued Jan. 11, 1877, to Melbourne W. Sinnott, for the southwest one-quarter of southeast one-quarter of section 7, township 1 south, range 14 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $327.47; interest paid, $———. Deed issued August 2, 1881, to Melbourne W. Sinnott. Present owner of contract, ————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 491.

Issued Jan. 29, 1877, to Ivar A. Weid, for northwest one-quarter of northwest one-quarter of section 11, township 1 south, range 14 W., S. B. M. containing 40 acres. Agreed purchase price $———. Purchase price paid $160.00; interest paid, $———. Deed issued Jan. 3, 1877, to Ivar A. Weid. Present owner of contract, ————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 492.

Issued Jan. 2, 1877, to Wm. H. Hill, for the east one-half of southeast one-quarter of section 11, township 1 south, range 14 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase paid, $1118.15; interest paid, $———. Deed issued Dec. 24, 1881, to Jennie E. Hill. Present owner of contract, ————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 482.

Issued Dec. 26, 1876, to James M. Sutton, for the west one-half of southeast one-quarter of section 11, township 1 south, range 14 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $1109.35; interest paid, $———. Deed issued Oct. 26, 1881, to James M. Sutton. Present owner of contract, ——————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 529.

Issued Feb. 19, 1877, to Joseph M. Sherburne, for lots 1,2,3,and 4 of section 23, township 1 south, range 14 west, S. B. M., containing 51 12-100 acres. Agreed purchase price $———. Purchase price paid $613.44; interest paid, $———. Deed issued Feb. 23, 1877, to Joseph M. Sherburne. Present owner of contract, ——————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 1670.

Issued Nov. 9, 1881, to Germain Pellissnier, for the northwest one-quarter of section 25, township 1 south, range 14 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $3603.20; interest paid, $———. Deed issued June 24, 1884, to Germain Pellissnier. Present owner of contract, ——————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 3621.

Issued May 26, 1884, to James Mair, for lot 1, southeast one-quarter of northeast one-quarter; north one-half of

southeast one-quarter; southeast one-quarter of southeast one-quarter and east one-half of southwest one-quarter of section 1, township 1 south, range 15 west, S. B. M., containing 280 acres. Agreed purchase price $———. Purchase price paid $660.00; interest paid, $———. Deed issued May 28, 1884, to James Mair. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3622.

Issued May 26, 1884. To M. J. Golden, for the east one-half of northwest one-quarter; southwest one-quarter of northeast one-quarter and lot 2 of section 1, township 1 south, range 15 west, S. B. M., containing 160 acres. Agreed purchase price, $320.00. Purchase price paid $427.17; interest paid, $139.17. Deed issued ————, to ————. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3620.

Issued May 26, 1884, to Mrs. M. C. Tullis, for the southwest one-quarter of southeast one-quarter of section 1, township 1 south, range 15 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $100.00; interest paid, $———. Deed issued May 28, 1884, to M. C. Tullis. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3623.

Issued May 26, 1884, to Noah Levering, for the southwest one-quarter of southwest one-quarter of section 1,

township 1 south, range 15 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $128.00; interest paid, $———. Deed issued June 3, 1889, to Noah Levering. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 8010.

Issued August 11, 1887, to H. S. Bridge, for the northwest one-quarter of southwest one-quarter of section 1, township 1 south, range 15 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $147.80; interest paid, $———. Deed issued Feb. 28, 1896, to Leander Shores. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3629.

Issued May 26, 1884, to T. J. Moffett, for the west one-half of southeast one-quarter and west one-half of northeast one-quarter of section 11, township 1 south, range 15 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $320.00; interest paid, $———. Deed issued May 28, 1884, to T. J. Moffett. Present owner of contract, ————————. ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3628.

Issued May 26, 1884, to H. E. Martens, for the northeast one-quarter of southeast one-quarter and southeast one-quarter of northeast one-quarter of section 11, township 1 south, range 1 west, S. B. M., containing 80 acres.

Agreed purchase price $———. Purchase price paid $160.00; interest paid, $———. Deed issued May 28, 1884, to H. E. Martens. Present owner of contract, ——————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3623.

Issued May 26, 1884, to Noah Levering, for the northeast one-quarter of northeast one-quarter of section 11, township 1 south, range 15 west, S. B. M., containing 40 acres. Agreed purchase price $— ——. Purchase price paid $102.40; interest paid, $———. Deed issued June 3, 1889, to Noah Levering. Present owner of contract, ——————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3627.

Issued May 26, 1884, to Pierce E. Benedict, for south one-half of northwest one-quarter and southwest one-quarter of section 11, township 1 south, range 15 west, S. B. M. containing 240 acres. Agreed purchase price $———. Purchase price paid $400.80; interest paid, $———. Deed issued May 28, 1884, to Pierce E. Benedict. Present owner of contract, ——————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3626.

Issued May 26, 1884, to Mary F. Ritchie, for the southeast one-quarter of southeast one-quarter of section 11, township 1 south, range 15 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $120.00; interest paid, $———. Deed issued May

28, 1884, to Mary F. Ritchie. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 6656.

Issued April 4, 1887, to B. Chandler, for lot 1 of section 3, township 2 south, range 11 west, S. B. M., containing 21 35-100 acres. Agreed purchase price $———. Purchase price paid $153.26; interest paid, $———. Deed issued Oct. 25, 1887, to Burdett Chandler. Present power of contract, ————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 1281.

Issued Oct. 6, 1881, to Robert Turnbull, for the northeast one-quarter of southeast one-quarter and south one-half of southeast one-quarter of section 9, township 2 south, range 11 west, S. B. M., containing 120 acres. Agreed purchase price $———. Purchase price paid $304.20; interest paid, $———. Deed issued Jan. 21, 1882, to Robert Turnbull. Present owner of contract, ————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 835.

Issued July 26, 1880, to Alice W. Barrows, for lots 1 and 2 of section 3, township 2 south, range 13 west, S. B. M., containing 4 acres. Agreed purchase price $———. Purchase price paid $250.00; interest paid, $———. Deed issued July 28, 1880, to Alice W. Barrows. Present owner of contract, ————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 2063.

Issued Jan. 23, 1882, to Martha Vaughn, for fraction of lot 1 of section 5, township 2 south, range 13 west, S. B. M., containing 7-100 acres. Agreed purchase price $———. Purchase price paid $60.00; interest paid, $———. Deed issued Feb. 14, 1882, to Martha Vaughn. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 2074.

Issued Feb. 3, 1882, to James E. Blair, for fraction of lot 1 of section 5, township 2 south, range 13 west, S. B. M., containing 26-100 acres. Agreed purchase price $———. Purchase price paid $60.00; interest paid, $———. Deed issued Feb. 14, 1882, to James E. Blair. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 2508.

Issued Oct. 24, 1882, to Camille Garnier, for the south one-half of northeast one-quarter of section 11, township 2 south, range 14 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $6400.00; interest paid, ———. Deed issued Oct. 27, 1882, to Camille Garnier. Present owner of contract, ————————. Patent No. 4. Issued June 26, 1882, for the land described above.

Contract No. 2044.

Issued Jan. 11, 1882, to E. L. Spitley and James T. Hoblit, for the southwest one-quarter of section 13, township 2 south, range 14 west, S. B. M., containing 160 acres.

Agreed purchase price $———. Purchase price paid $4974.80; interest paid, $———. Deed issued Jan. 12, 1882, to E. L. Spitley and James T. Hoblit. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 1672.

Issued Nov. 9, 1881, to Louis Sentons, for all of fractional section 17, township 2 south, range 14 west, S. B. M., containing 392 59-100 acres. Agreed purchase price $———. Purchase price paid $2956.55; interest paid, $———. Deed issued Jan. 4, 1883, to Louis Sentons. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 2211.

Issued March 23, 1882, to R. W. Waterman, for the southwest one-quarter of northeast one-quarter; west one-half of southeast one-quarter and west one-half of section 11, township 1 north, range 4 west, S. B. M., containing 440 acres. Agreed purchase price $———. Purchase price paid $1560; interest paid, $———. Deed issued April 3, 1882, to R. W. Waterman. Present owner of contract, ————————. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 3026.

Issued Jan. 11, 1884, to Aaron Harrison, for the fractional southwest one-quarter of section 13, township 1 north, range 4 west, S. B. M., containing 113 54-100 acres. Agreed purchase price $———. Purchase price paid $1329.66; interest paid $———. Deed issued Feb. 24,

1887, to Aaron Harrison. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 4642.

Issued June 1, 1885, to H. H. Linville, for the fractional northwest one-quarter of section 27, township 1 north, range 5 west, S. B. M., containing 152 40-100 acres. Agreed purchase price $762.00. Purchase price paid $493.76; interest paid, $341.36. Deed issued ———— to ————. Present owner of contract,———— ——. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3554.

Issued May 15, 1884, to Frank Bohnart, for lots 2 and 3 of northeast one-quarter of section 27, township 1 north, range 5 west, S. B. M., containing 57 91-100 acres. Agreed purchase price $———. Purchase price paid $456.84; interest paid, $———. Deed issued Jan. 6, 1890, to Frank Bohnart. Present owner of contract,———— ——. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3553.

Issued May 15, 1884, to E. H. Morse, for the fractional southeast one-quarter of section 27, township 1 north, range 5 west, S. B. M., containing 159 99-100 acres. Agreed purchase price $———. Purchase price paid $1148.46; interest paid, $———. Deed issued Dec. 29, 1886, to E. H. Morse. Present owner of contract, ——— ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 4234.

Issued Jan. 29, 1885, to J. R. Nevin, for the southwest one-quarter of section 27, township 1 north, range 5 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $1021.00; interest paid, $———. Deed issued Jan. 9, 1890, to Joseph R. Nevin. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 6011.

Issued Nov. 1, 1886, to F. W. Wood and Geo. S. Safford, for the west one-half of southwest one-quarter of section 9, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $231.73; interest paid, $———. Deed issued Sept. 23, 1889, to F. W. Wood and Geo. S. Safford. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3266.

Issued March 3, 1884, to Michel Sainsevain, for the west one-half of section 11, township 1 north, range 6 west, S. B. M., containing 320 acres. Agreed purchase price $———. Purchase price paid $867.20; interest paid, $———. Deed issued Sept. 28, 1885, to Jean L. Sainsevain. Present owner of contract,————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3264.

Issued March 3, 1884, to A. G. Perdew, for the south one-half of southeast one-quarter of section 13, township

1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $1026.15; interest paid, $———. Deed issued March 27, 1889, to M. Byrne. Present owner of contract, ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3265.

Issued March 3, 1884, to R. P. Perdew, for the north one-half of southeast one-quarter of section 13, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $1109.86; interest paid, $———. Deed issued Feb. 16, 1891, to M. Byrne. Present owner of contract, ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3436.

Issued April 17, 1884, to Archibald Martin, for the southwest one-quarter of section 13, township 1 north, range 6 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $2046.75; interest paid, $———. Deed issued June 3, 1889, to Archibald Martin. Present owner of contract, ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 6210.

Issued Jan. 3, 1887, to T. Banbury, for the northeast one-quarter of section 15, township 1 north, range 6 west, S. B. M., containing 160 acres. Agreed purchase price $800.00. Purchase price paid $382.00; interest paid,

$224.00. Deed issued ————, to ————. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 4411.

Issued March 3, 1885, to F. W. Wood and George S. Safford, for the northwest one-quarter of section 15, township 1 north, range 6 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $2052.22; interest paid, $———. Deed issued March 28, 1890, to F. W. Wood and Geo. S. Safford. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3365.

Issued March 24, 1884, to Mrs. Maria Porter, for the east one-half of southeast one-quarter of section 15, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $1063.80; interest paid, $———. Deed issued Feb. 14, 1891, to Mrs. Maria Porter. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 4312.

Issued Feb. 7, 1885, to T. Banbury, for the west one-half of southeast one-quarter of section 15, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $800.00. Purchase price paid $518.40; interest paid, $358.40. Deed issued ————, to ————. Present owner of contract, ———— ——. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3366.

Issued March 24, 1884, to Charles H. Morse, for the east one-half of southwest one-quarter of section 15, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $1030.07; interest paid, $———. Deed issued May 17, 1888, to F. W. Wood and Geo. S. Safford. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3966.

Issued Oct. 1, 1884, to William Hawker, for the west one-half of southwest one-quarter of section 15, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $1024.00; interest paid, $———. Deed issued Sept. 23, 1889, to Mrs. I. P. Dupuytren, F. W. Wood and Geo. S. Safford. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 5676.

Issued June 17, 1886, to C. Elliott and M. Kelleher, for the east one-half of northeast one-quarter of section 17, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $400.00. Purchase price paid $294.58; interest paid $173.44. Deed issued ———, to ————————. Present owner of contract, ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 10252.

Issued May 19, 1890, to T. Banbury, for the east one-half of northeast one-quarter and west one-half of southeast one-quarter of section 23, township 1 north, range 6 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $1771.60; interest paid, $———. Deed issued Feb. 17, 1892, to T. Banbury. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3267.

Issued March 3, 1884, to T. Banbury, for the southwest one-quarter of northeast one-quarter; southeast one-quarter of northwest one-quarter and southwest one-quarter of section 23, township 1 north, range 6 west, S. B. M., containing 240 acres. Agreed purchase price $———. Purchase price paid $2560.00; interest paid $———. Deed issued April 16, 1889, to T. Banbury. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 6498.

Issued March 16, 1887, to Henry M. Loud, for the west one-half of northwest one-quarter of section 23, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $289.60; interest paid $———. Deed issued March 16, 1896, to Henry M. Loud. Present owner of contract,———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 10253.

Issued March 19, 1890, to William Dickey, for the east one-half of southeast one-quarter of section 23, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $800.00; interest paid $———. Deed issued March 28, 1890, to William Dickey. Present owner of contract,———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3931.

Issued Sept. 24, 1884, to E. H. Forester, for the northwest one-quarter of northwest one-quarter; northeast one-quarter of northeast one-quarter; south one-half of northeast one-quarter; south one-half of northwest one-quarter and south one-half of section 25, township 1 north, range 6 west, S. B. M., containing 560 acres. Agreed purchase price $4200.00. Purchase price paid $1780.80; interest paid, $940.80. Deed issued ——— to ———. Present owner of contract,———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3868.

Issued August 20, 1884, to Joseph A. Scott, for the northwest one-quarter of northeast one-quarter and northeast one-quarter of northwest one-quarter of section 25, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $700.80; interest paid, $———. Deed issued August 29, 1887, to Joseph A. Scott. Present own-

er of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 10250.

Issued March 15, 1890, to Geo. S. Safford, F. W. Wood and Mrs. I. Pigne Dupuytren, for the northwest one-quarter of northeast one-quarter of section 27, township 1 north, range 6 west, S. B. M., containing 40 acres. Agreed purchase price $400.00. Purchase price paid $236.80; interest paid $156.80. Deed issued ————, to ————. Present owner of contract, ———— ——. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 5678.

Issued June 17, 1886, to C. Elliott, for the east one-half of northeast one-quarter of section 27, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $400. Purchase price paid $214.40; interest paid, $134.40. Deed issued ————, to ————. Present owner of contract, Geo. C. Mesnager and Pierre Darancette. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 4411.

Issued March 3, 1885, to F. W. Wood and Geo. S. Safford, for the southwest one-quarter of northeast one-quarter; northwest one-quarter of southeast one-quarter, and northwest one-quarter of section 27, township 1 north, range 6 west, S. B. M., containing 240 acres. Agreed purchase price $———. Purchase price paid $2308.26; interest paid $———. Deed issued March 28,

1890, to F. W. Wood and Geo. S. Safford. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 4436.

Issued March 13, 1885, to T. Banbury, for the east one-half of southeast one-quarter of section 27, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $553.40, interest paid, $———. Deed issued Feb. 9, 1892; to T. Banbury. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 4418.

Issued March 5, 1885, to E. L. Watkins, for the southwest one-quarter of southeast one-quarter of section 27, township 1 north, range 6 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $517.60; interest paid, $———. Deed issued June 7, 1890, to F. W. Wood, Geo. S. Safford and Mrs. I. P. Dupuytren. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 5868.

Issued August 24, 1886, to N. B. Bradley and H. M. Loud, for the east one-half of southwest one-quarter of section 27, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $805.76; interest paid, $———. Deed issued Oct. 7, 1887, to N. B. Bradley and H. M. Loud.

Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 5679.

Issued June 17, 1886, to C. Elliott, for the west one-half of southwest one-quarter of section 27, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $251.05; interest paid, $———. Deed issued Jan. 13, 1891, to R. W. Poindexter. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 6160.

Issued Dec. 20, 1886, to W. H. Carlson, for the west one-half of section 29, township 1 north, range 6 west, S. B. M., containing 320 acres. Agreed purchase price $1600. Purchase price paid $498.60; interest paid, $179.20. Deed issued ————————, to ————————. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3297.

Issued March 10, 1884, to Geo. Chaffey, for the east one-half of southeast one-quarter of section 29, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $882.13; interest paid, $———. Deed issued Jan. 12, 1886, to George Chaffey. Present owner of contract,———————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3298.

Issued March 10, 1884, to Geo. Chaffey, for the west one-half of southeast one-quarter of section 29, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $1104.31; interest paid $———. Deed issued April 21, 1891, to Thomas Thomsen. Present owner of contract, ————. Patent No. 6. Issued December 27, 1883, for the land described above.

Contract No. 4185.

Issued January 7, 1885, to Leslie T. Smith, for the east one-half of northeast one-quarter of section 31, township 1 north, range 6 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $800.00; interest paid $———. Deed issued January 9, 1885, to Leslie T. Smith. Present owner of contract, ————. Patent No. 6. Issued December 27, 1883, for the land described above.

Contract No. 6089.

Issued November 26, 1886, to W. Taylor English, for the north one-half of southwest one-quarter and west one-half of northeast one-quarter of section 31, township 1 north, range 6 west, S. B. M., containing 160.55 acres. Agreed purchase price $1605.50. Purchase price paid $1190.30; interest paid $747.95. Deed issued ———— to ————. Present owner of contract, John S. Mattman. Patent No. 6. Issued December 27, 1883, for the land described above.

Contract No. 5650.

Issued June 5, 1886, to W. T. Baker and H. L. Macneil, for the fractional northwest one-quarter of section 31, township 1 north, range 6 west, S. B. M., containing 162.19 acres. Agreed purchase price $———. Purchase price paid $1053.98; interest paid $———. Deed issued December 2, 1891, to Charles R. Long and Thomas Thomsen. Present owner of contract ————. Patent No. 6. Issued December 27, 1883, for the land described above.

Contract No. 10253.

Issued March 19, 1890, to William Dickey, for the west one-half of southeast one-quarter and south one-half of southwest one-quarter of section 31, township 1 north, range 6 west, S. B. M., containing 160 18-100 acres. Agreed purchase price $———. Purchase price paid $1,601.80; interest paid, $———. Deed issued March 28, 1890, to William Dickey. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 10265.

Issued April 4, 1890, to William Dickey, for the southeast one-quarter of southeast one-quarter of section 31, township 1 north, range 6 west, S. B. M., containing 40 acres. Agreed purchase price, $———. Purchase price paid $400.00; interest paid, $———. Deed issued April 8, 1890, to William Dickey. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 10902.

Issued Nov. 7, 1891, to James Hanley, for the northeast one-quarter of southeast one-quarter of section 31, township 1 north, range 6 west, S. B. M., containing 40 acres. Agreed purchase price $400. Purchase price paid $124.80; interest paid, $44.80. Deed issued ——— to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 5869.

Issued Aug. 24, 1886, to N. B. Bradley and H. M. Loud, for the northeast one-quarter of section 35, township 1 north, range 6 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $1,468.80; interest paid, $———. Deed issued Sept. 16, 1890, to N. B. Bradley and H. M. Loud. Present owner of contract, ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 5870.

Issued Aug. 24, 1886, to N. B. Bradley and H. M. Loud, for the east one-half of section 35, township 1 north, range 6 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $1,468.80; interest paid, $———. Deed issued Sept. 16, 1890, to N. B. Bradley and H. M. Loud. Present owner of contract, ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 5209.

Issued Jan. 12, 1886, to M. E. Wood, for the northwest one-quarter of section 35, township 1 north, range 6

west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $1,536.00; interest paid, $———. Deed issued Jan. 13, 1891, to M. E. Wood. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 5680.

Issued June 17, 1886, to C. Elliott, for the southwest one-quarter of section 35, township 1 north, range 6 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $1,582.67; interest paid, $———. Deed issued March 10, 1892, to S. K. McIlhenny. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3559.

Issued May 15, 1884, to J. C. Sommer, for lots 1 and 2 of section 21, township 1 north, range 7 west, S. B. M., containing 68.28 acres. Agreed purchase price $———. Purchase price paid $341.40; interest paid, $———. Deed issued May 16, 1884, to J. C. Sommer. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3558.

Issued May 15, 1884, to H. E. Sontag, for lots 3 and 4 of section 21, township 1 north, range 7 west, S. B. M., containing 68 28-100 acres. Agreed purchase price $———. Purchase price paid $341.93; interest paid, $———. Deed issued June 16, 1884, to H. E. Sontag. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3710.

Issued June 13, 1884, to I. W. Heldman and O. W. Childs for the frl. east one-half of section 27, township 1 north, range 7 west, S. B. M., containing 173 48-100 acres. Agreed purchase price $———. Purchase price paid $1,518.42; interest paid, $———. Deed issued June 24, 1884, to I. W. Heldman and O. W. Childs. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3557.

Issued May 15, 1884, to A. O. Porter, for the northwest one-quarter of northeast one-quarter; east one-half of northeast one-quarter; southeast one-quarter of southeast one-quarter and lots 1, 2, 3 and 4 of section 35, township 1 north, range 7 west, S. B. M., containing 165 88-100 acres. Agreed purchase price $———. Purchase price paid $1,658.80; interest paid, $———. Deed issued May 16, 1884, to A. O. Porter. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 773.

Issued Dec. 10, 1879, to Albert A. Dexter, Jr., for the northeast one-quarter of northwest one-quarter of section 13, township 1 north, range 8 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid; $100.00, interest paid, $ ——. Deed issued Dec. 11, 1879, to Albert A. Dexter, Jr. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 1022.

Issued March 8, 1881, to W. R. Wiggins, for the southeast one-quarter of northwest one-quarter of section 13, township 1 north, range 8 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $100.00; interest paid, $———. Deed issued March 17, 1881, to W. R. Wiggins. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 1034.

Issued March 23, 1881, to W. R. Wiggins, for the southwest one-quarter of northwest one-quarter of section 13, township 1 north, range 8 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $100.00; interest paid, $———. Deed issued March 24, 1881, to W. R. Wiggins. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 2340.

Issued July 7, 1882, to M. L. Wicks, for the northwest one-quarter of northwest one-quarter of section 13, township 1 north, range 8 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid, $513.12; interest paid, $———. Deed issued Aug. 8, 1887, to Pomona Land and Water Co. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 3861.

Issued Aug. 11, 1884, to Pomona Land and Water Co., for the west one-half of southwest one-quarter of section

15, township 1 north, range 8 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $200.00; interest paid, $———. Deed issued Aug. 12, 1884, to Pomona Land and Water Co. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 2756.

Issued April 25, 1883, to N. W. Stowell, for the southeast one-quarter of section 19, township 1 north, range 8 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $488.05; interest paid, $———. Deed issued April 5, 1887, to L. L. Bradbury. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 6133.

Issued Dec. 14, 1886, to J. L. Howland, for the east one-half of southwest one-quarter and southeast one-quarter of section 21, township 1 north, range 8 west, S. B. M., containing 240 acres. Agreed purchase price $600. Purchase price paid $321.60; interest paid, $201.60. Deed issued ———————— to ————————. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 2851.

Issued Sept. 27, 1883, to Wm. Carthy, for the southwest one-quarter of southwest one-quarter of section 21, township 1 north, range 8 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $116.33; interest paid, $———. Deed issued Sept. 24,

1886, to H. Hiller. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 4507.

Issued April 6, 1885, to Henry H. Colegrove, for the northwest one-quarter of southwest one-quarter of section 21, township 1 north, range 8 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $100.00; interest paid, $———. Deed issued April 13, 1885, to Henry H. Colgrove. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 7012.

Issued May 13, 1887, to C. Elliott and M. Kelleher, for the west one-half of northeast one-quarter of section 23, township 1 north, range 8 west, S. B. M., containing 80 acres. Agreed purchase price $100.00. Purchase price paid $102.40; interest paid, $22.40. Deed issued ——— to ————. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 2341.

Issued July 7, 1882, to Cyrus T. Mills, for the east one-half of northeast one-quarter of section 23, township 1 north, range 8 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $469.75; interest paid, $———. Deed issued Aug. 19, 1885, to Edward Every. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 5689.

Issued June 22, 1886, to W. J. Bodenhamer, for lots 1, 2 and 3 of section 25, township 1 north, range 8 west, S. B. M., containing 67 51-100 acres. Agreed purchase price $———. Purchase price paid $180.70; interest paid, $———. Deed issued Oct. 21, 1887, to W. J. Bodenhamer. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 6655.

Issued April 4, 1887, to William Thorpe, for the south one-half of southwest one-quarter of section 15, township 1 north, range 9 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $256.00; interest paid $———. Deed issued April 8, 1892, to William Thorpe. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3866.

Issued Aug. 18, 1884, to Evan Harer, for the south one-half of the southeast one-quarter of section 19, township 1 north, range 9 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $436.40; interest paid $———. Deed issued April 5, 1887, to Evan Harer. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3971.

Issued Oct. 3, 1884, to J. C. West and J. J. West, for the north one-half of southeast one-quarter and southwest

one-quarter of section 21, township 1 north, range 9 west, S. B. M., containing 240 acres. Agreed purchase price $———. Purchase price paid $1,364.27; interest paid, $———. Deed issued March 18, 1887, to J. C. West and J. J. West. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3970.

Issued Oct. 3, 1884, to W. B. Cullen, for south one-half of southeast one-quarter of section 21, township 1 north, range 9 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $479.70; interest paid $———. Deed issued May 1, 1888, to Chas. A. H. de S. Sozigethy. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 4025.

Issued Oct. 21, 1884, to W. H. Bowman, for the southwest one-quarter of southwest one-quarter of section 15, township 1 north, range 10 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $100.00; interest paid $———. Deed issued Oct. 22, 1884, to W. H. Bowman. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3923.

Issued Sept. 19, 1884, to F. A. Bliss and W. W. Bliss, for the east one-half of northeast one-quarter and fractional southeast one-quarter of section 19, township 1

north, range 10 west, S. B. M., containing 189 43-100 acres. Agreed purchase price $———. Purchase price paid $632.63; interest paid $———. Deed issued Sept. 18, 1890, to F. A. Bliss and W. W. Bliss. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3947.

Issued Sept. 25, 1884, to Nelson Van Tasel, for northeast one-quarter of southwest one-quarter and lot 3 of section 21, township 1 north, range 10 west, S. B. M., containing 75 55-100 acres. Agreed purchase price $———. Purchase price paid $420.47; interest paid, $———. Deed issued Oct. 19, 1886, to Nelson Van Tasel. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 5743.

Issued July 6, 1886, to William Lacey, for the northeast one-quarter of northeast one-quarter and lot 4 of section 21, township 1 north, range 10 west, S. B. M., containing 79 89-100 acres. Agreed purchase price $199.72. Purchase price paid $95.84; interest paid $55.90. Deed issued———. to ————————. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3677.

Issued June 5, 1884, to Philip Shorey, for the north one-half of northeast one-quarter of section 25, township 1 north, range 10 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $280.32; in-

terest paid $———. Deed issued June 30, 1887, to Philip Shorey. Present owner of contract, ————————. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 4449.

Issued March 17, 1885, to J. S. Vosburg and W. G. Cogswell, for the east one-half of southwest one-quarter; southeast one-quarter, and lot 2 of section 7, township 1 north, range 11 west, S. B. M., containing 283 75-100 acres. Agreed purchase price $———. Purchase price paid $464.20; interest paid, $———. Deed issued April 13, 1885, to J. S. Vosburg and W. G. Cogswell. Present owner of contract, ————————. Patent No. 8. Issued Aug. 8, 1884, for the land described above.

Contract No. 11343.

Issued June 15, 1894, to Sarah Ann Brown, for northwest one-quarter of northwest one-quarter of section 13, township 1 north, range 11 west, S. B. M., containing 40 acres. Agreed purchase price $240. Purchase price paid $61.44; interest paid, $13.44. Deed issued ———— to ————————. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 4628.

Issued March 20, 1885, to J. R. Brown, for the east one-half of southwest one-quarter of section 13, township 1 north, range 11 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $237.36; interest paid $———. Deed issued Oct. 10, 1888, to Will-

iam D. Smith. Present owner of contract, ————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 2830.

Issued Sept. 4, 1883, to Elias J. Baldwin, for all of fractional section 15, township 1 north, range 15 west, S. B. M., containing 591 12-100 acres. Agreed purchase price $———. Purchase price paid $13,030.20; interest paid, $———. Deed issued March 23, 1889, to Elias J. Baldwin. Present owner of contract, ————. Patent No. 1. Issued March 29, 1876, for the east one-half of northeastone-quarter; northeast one-quarterof northwest one-quarter; west one-half of northwest one-quarter; northwest one-quarter of southwest one-quarter; fractional southeast one-quarter and lots 1 and 2. Patent No. 6. Issued Dec. 27, 1883, for the west one-half of northeast one-quarter; southeast one-quarter of northwest one-quarter and northeast one-quarter of southwest one-quarter.

Contract No. 829.

Issued July 16, 1880, to George A. Macomber and H. S. Dickey, for the south one-half of northeast one-quarter of section 17, township 1 north, range 11 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $264.86; interest paid $———. Deed issued May 24, 1886, to N. C. Carter. Present owner of contract, ————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 841.

Issued Aug. 10, 1880, to Geo. A. Macomber and H. S. Dickey, for the southeast one-quarter of northwest one-quarter of section 17, township 1 north, range 11 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $132.04; interest paid, $———. Deed issued May 24, 1886, to N. C. Carter. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 502.

Issued Jan. 8, 1877, to Nathaniel C. Carter, for the north one-half of southeast one-quarter and lots 3 and 4 of section 17, township 1 north, range 11 west, S. B. M., containing 108 77-100 acres. Agreed purchase price $———. Purchase price paid $761.40; interest paid, $———. Deed issued Jan. 10, 1882, to N. C. Carter. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 2299.

Issued April 26, 1882, to H. J. Stevenson, for the northwest one-quarter of northeast one-quarter and lots 3 and 4 of section 23, township 1 north, range 11 west, S. B. M., containing 103 49-100 acres. Agreed purchase price $———. Purchase price paid $292.21; interest paid, $———. Deed issued Aug. 15, 1884, to W. N. Monroe. Present owner of contract, ————————. Patent No. 1. Issued March 29, 1876, for the land described above.

Contract No. 2296.

Issued April 21, 1882, to Charles Mueller, for the southwest one-quarter of northwest one-quarter and lot 1 of section 23, township 1 north, range 11 west, S. B. M., containing 58 62-100 acres. Agreed purchase price $———. Purchase price paid $297.00; interest paid, $———. Deed issued Feb. 1, 1887, to Charles Mueller. Present owner of contract, ————————. Patent No. 1, issued March 29, 1876, for the land described above.

Contract No. 743.

Issued Sept. 24, 1879, to Luther Hall, for lots 1 and 2 of northeast one-quarter of section 3, township 1 north, range 12 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $200.00; interest paid, $——. Deed issued Sept. 24, 1879, to Luther Hall. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 784.

Issued Feb. 6, 1880, to R. J. Forsyth, for lot 3 of northwest one-quarter of section 3, township 1 north, range 12 west, S. B. M., containing 39 88-100 acres. Agreed purchase price $———. Purchase price paid $119.64; interest paid, $———. Deed issued Feb. 7, 1880, to R. J. Forsyth. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 735.

Issued Sept. 15, 1879, to W. F. P. Noble, for lot 4 of northwest one-quarter of section 3, township 1 north,

range 12 west, S. B. M., containing 40 24-100 acres. Agreed purchase price $———. Purchase price paid $100.60; interest paid, $——. Deed issued Sept. 17, 1879, to W. F. P. Noble. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 821.

Issued June 17, 1880, to John McCann, for lot 5 of section 3, township 1 north, range 12 west, S. B. M., containing 20 16-100 acres. Agreed purchase price $———. Purchase price paid $50.40; interest paid, $———. Deed issued June 18, 1880, to John McCann. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 1027.

Issued June 24, 1881, to F. J. Woodbury and J. P. Woodbury, for the northeast one-quarter of southeast one-quarter of section 3, township 1 north, range 12 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $100.00; interest paid, $———. Deed issued June 29, 1881, to F. J. Woodbury and J. P. Woodbury. Present owner of contract, ——— ———. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 961.

Issued Dec. 15, 1880, to Levi W. Giddings, for lots 1, 8 and 9 of section 5, township 1 north, range 12 west, S. B. M., containing 76 20-100 acres. Agreed purchase price $———. Purchase price paid $201.17; interest paid, $———. Deed issued Jan. 7, 1882, to Levi W. Giddings.

Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 738.

Issued Sept. 20, 1879, to Levi W. Giddings, for lot 2 of section 5, township 1 north, range 12 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $100.00; interest paid $———. Deed issued Sept. 22, 1879, to Levi W. Giddings. Present owner of contract, ———— ——. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 740.

Issued Sept. 22, 1879, to Henry G. Monks, for lots 3, 4, 5, 6 and 7 of section 5, township 1 north, range 12 west, S. B. M., containing 148 28-100 acres. Agreed purchase price $———. Purchase price paid $370.70; interest paid, $———. Deed issued Sept. 22, 1879, to Henry G. Monks. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 771.

Issued Dec. 1, 1879, to William Allen, for lots 1 and 2 of section 11, township 1 north, range 12 west, S. B. M., containing 36 65-100 acres. Agreed purchase price $———. Purchase price paid $91.63; interest paid $———. Deed issued Dec. 1, 1879, to William Allen. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 736.

Issued Sept. 15, 1879, to William Allen, Mary A. Crank, Albert Brigden and James Craig, for lots 3, 4 and 5 of

section 11, township 1 north, range 12 west, S. B. M., containing 95 10-100 acres. Agreed purchase price $———. Purchase price paid $237.75; interest paid, $———. Deed issued Sept. 17, 1879, to William Allen, Mary A. Crank, Albert Brigden and James Craig. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 717.

Issued June 27, 1879, to Job. C. Davis, for lot 4 of section 13, township 1 north, range 12 west, S. B. M., containing 23 6-100 acres. Agreed purchase price $———. Purchase price paid $57.65; interest paid, $———. Deed issued June 27, 1879, to Job. C. Davis. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 778.

Issued Dec. 29, 1879, to Samuel Chapman, Jr., for lots 1 and 2 of section 13, township 1 north, range 12 west, S. B. M., containing 47 20-100 acres. Agreed purchase price $———. Purchase price paid $118.00; interest paid, $———. Deed issued Dec. 29, 1879, to Samuel Chapman, Jr. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 737.

Issued Sept. 15, 1879, to H. M. Fischer, for lots 1, 2 and 3 of section 3, township 1 north, range 14 west, S. B. M., containing 99 77-100 acres. Agreed purchase price $———. Purchase price paid $289.85; interest paid, $———. Deed issued Sept. 17, 1880, to H. M. Fischer. Present owner

of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 2038.

Issued Jan. 7, 1882, to Henry Martz, for southeast one-quarter of northwest one-quarter; southwest one-quarter of northeast one-quarter and northeast one-quarter of southwest one-quarter of section 3, township 1 north, range 14 west, S. B. M., containing 120 acres. Agreed purchase price $———. Purchase price paid $388.82; interest paid, $———. Deed issued Aug. 2, 1884, to Henry Martz. Present owner of contract,————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 1840.

Issued Dec. 16, 1881, to Wm. Nawter, for the southwest one-quarter of northwest one-quarter and lots 4 and 5 of section 3, township 1 north, range 14 west, S. B. M., containing 120 acres. Agreed purchase price $———. Purchase price paid $361.09; interest paid, $———. Deed issued April 1, 1884, to E. W. Lewis. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 1217.

Issued Sept. 20, 1881, to Edwin Smith, for the southeast one-quarter of section 3, township 1 north, range 14 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $500.80; interest paid, $———. Deed issued March 23, 1886, to Charles J. Fox. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 1207.

Issued Sept. 16, 1881, to Andrew M. Smith, for the west one-half of southwest one-quarter and southeast one-quarter of southwest one-quarter of section 3, township 1 north, range 14 west, S. B. M., containing 120 acres. Agreed purchase price $———. Purchase price paid $371.45; interest paid, $———. Deed issued Sept. 27, 1886, to Andrew M. Smith. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 4601.

Issued May 11, 1885, to M. L. Wicks, for lots 1 and 2 of section 5, township 1 north, range 14 west, S. B. M., containing 7 39-100 acres. Agreed purchase price $———. Purchase price paid $24.65; interest paid, $———. Deed issued June 20, 1887, to J. W. Smith. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 1275.

Issued Oct. 6, 1881, to Edwin Smith, for the fractional north one-half of section 9, township 1 north, range 14 west, S. B. M., containing 282 22-100 acres. Agreed purchase price $———. Purchase price paid $1,061.43; interest paid $———. Deed issued Feb. 4, 1884, to Edwin Smith. Present owner of contract, ————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 915.

Issued Oct. 29, 1880, to Edwin Smith, for the fractional south one-half of section 9, township 1 north, range 14

west, S. B. M., containing 260.02 acres. Agreed purchase price $———. Purchase price paid $1,269.25; interest paid $———. Deed issued Jan. 23, 1884, to Edwin Smith. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 788.

Issued March 11, 1880, to Simon White, for the west one-half of northwest one-quarter and lots 1, 2, 3 and 4 of section 11, township 1 north, range 14 west, S. B. M., containing 134 24-100 acres. Agreed purchase price $———. Purchase price paid $507.40; interest paid, $———. Deed issued Feb. 13, 1884, to Simon White. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 1011.

Issued Feb. 19, 1881, to Edwin Smith, for lot 1 of section 15, township 1 north, range 14 west, S. B. M., containing 2 92-100 acres. Agreed purchase price $———. Purchase price paid $12.41; interest paid, $———. Deed issued Feb. 24, 1881, to Edwin Smith. Present owner of contract, ————————. Patent No. 2. Issued April 4, 1879, for the land described above.

Contract No. 3613.

Issued May 26, 1884, to Clarence E. Richardson, for lots 1, 2, 3 and 4 of section 27, township 1 north, range 14 west, S. B. M., containing 78 49-100 acres. Agreed purchase price $———. Purchase price paid $207.22; interest paid, $———. Deed issued May 25, 1885, to Elijah H. Workman. Present owner of contract, ————————.

Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 5059.

Issued Dec. 11, 1885, to Presentacion B. de Haley, for the fractional southwest one-quarter of section 31, township 1 north, range 14 west, S. B. M., containing 162 40-100 acres. Agreed purchase price $———. Purchase price paid $1,039.35; interest paid $———. Deed issued Jan. 13, 1891, to A. Rosecrans. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 5060.

Issued Dec. 11, 1885, to Presentacion B. de Haley, for the fractional southeast one-quarter of section 31, township 1 north, range 14 west, S. B. M., containing 154 acres. Agreed purchase price $462.00. Purchase price paid, $221.75; interest paid, $129.35. Deed issued ————, to ————————. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3805.

Issued July 14, 1884, to B. Ballerino, for the south one-half of southwest one-quarter and lots 1 and 2 of section 33, township 1 north, range 14 west, S. B. M., containing 128 80-100 acres. Agreed purchase price $———. Purchase price paid $385 19-100; interest paid $———. Deed issued Jan. 31, 1881, to B. Ballerino. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 11,344.

Issued July 9, 1894, to B. Ballerino, for the south one-half of southeast one-quarter and lots 3 and 4 of section 33, township 1 north, range 14 west, S. B. M., containing 120 40-100 acres. Agreed purchase price $481.60. Purchase price paid $123.29; interest paid, $26.97. Deed issued ———— to ————. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 4453.

Issued March 18, 1885, to M. Kelleher and M. L. Wicks, for the east one-half of section 35, township 1 north, range 14 west, S. B. M., containing 320 acres. Agreed purchase price $———. Purchase price paid $1,045.77; interest paid, $———. Deed issued Sept. 18, 1890, to Mrs. Julia E. Lord. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3835.

Issued July 31, 1884, to S. A. Guiberson, for the northwest one-quarter of section 3, township 3 north, range 19 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $380.97; interest paid, $———. Deed issued Oct. 19, 1891, to S. A. Guiberson. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 4177.

Issued Jan. 5, 1885, to Alexander Phillips, for the east one-half of northeast one-quarter of section 5, township

3 north, range 19 west, S. B. M., containing 79 95-100 acres. Agreed purchase price $———. Purchase price paid $239.85; interest paid, $———. Deed issued Jan. 7, 1885, to Alexander Phillips. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3834.

Issued July 31, 1884, to John Cawelti, for the north one-half of southeast one-quarter; southwest one-quarter and north one-half of section 15, township 4 north, range 19 west, S. B. M., containing 560 acres. Agreed purchase price $———. Purchase price paid $1,792.00; interest paid $———. Deed issued Aug. 19, 1889, to John Cawelti. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3832.

Issued July 31, 1884, to J. A. Conaway, for the south one-half of southeast one-quarter of section 15, township 4 north, range 19 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $275; interest paid $———. Deed issued Aug. 10, 1891, to J. A. Conaway. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 6247.

Issued Jan. 14, 1887, to Thomas F. Arundell, for the east one-half of northeast one-quarter and east one-half of southeast one-quarter of section 17, township 4 north, range 19 west, S. B. M., containing 160 acres. Agreed

purchase price $———. Purchase price paid $536.15; interest paid $———. Deed issued Aug. 10, 1893, to Thomas F. Arundell. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3852.

Issued Aug. 5, 1884, to Thomas Rhodes, for the north one-half and southwest one-quarter of section 21, township 4 north, range 19 west, S. B. M., containing 480 acres. Agreed purchase price $———. Purchase price paid $960; interest paid $———. Deed issued Aug. 6, 1884, to Thomas Rhodes. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 6953.

Issued Aug. 30, 1887, to N. A. M. Kellogg, for the southeast one-quarter of section 21, township 4 north, range 19 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $320; interest paid, $———. Deed issued June 21, 1887, to N. A. M. Kellogg. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3832.

Issued July 31, 1884, to J. A. Conaway, for the northwest one-quarter of section 23, township 4 north, range 19 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $550.00; interest paid, $———. Deed issued Aug. 10, 1891, to J. A. Conaway. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3833.

Issued July 31, 1884, to C. C. Riley, for the southwest one-quarter of section 23, township 4 north, range 19 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid, $512.00; interest paid, $———. Deed issued July 30, 1889, to C. C. Riley. Present owner of contract, ————————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 10,243.

Issued Feb. 28, 1890, to Charles T. Meredith, for the northwest one-quarter of northwest one-quarter of section 25, township 4 north, range 19 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $100; interest paid, $———. Deed issued March 1, 1890, to C. T. Meredith. Present owner of contract, ————————. Patent No. —. Issued ——— for ——— acres of land described above. Title acquired under decree of U. S. Circuit Court, May 21, 1887.

Contract No. 9755.

Issued June 20, 1888, to J. C. Stone, for the northwest one-quarter of southeast one-quarter; east one-half of southwest one-quarter and southwest one-quarter of southwest one-quarter of section 25, township 4 north, range 19 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $500; interest paid, $———. Deed issued July 16, 1888, to J. C. Stone. Present owner of contract, ————————. Patent No. —. Issued ———————— for ——— acres of land described above. Title acquired under decree of U. S. Circuit Court, May 21, 1887.

Contract No. 9980.

Issued Nov. 28, 1880, to Pascual Real, for east one-half of southeast one-quarter of section 25, township 4 north, range 19 west, S. B. M., containing 80 acres. Agreed purchase price 400. Purchase price paid $192.00; interest paid, $112.00. Deed issued ———— to ————. Present owner of contract, ————. Patent No.—. Issued ————, for ———acres of land described above. Title acquired under decree of U. S. Circuit Court, Dec. 11, 1885.

Contract No. 3991.

Issued Oct. 14, 1884, to J. A. Conaway, for the northeast one-quarter of section 27, township 4 north, range 19 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $551.32; interest paid, $———. Deed issued Oct. 22, 1891, to J. A. Conaway. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 10,605.

Issued Nov. 28, 1890, to Rush J. Ealy, for the northeast one-quarter of northwest one-quarter and west one-half of northwest one-quarter of section 27, township 4 north, range 19 west, S. B. M., containing 120 acres. Agreed purchase price $300.00. Purchase price paid $144.00; interest paid, $84.00. Deed issued ———— to ————. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 3363.

Issued March 24, 1884, to Rush J. Ealy, for the southeast one-quarter of northwest one-quarter of section 27, town-

ship 4 north, range 19 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $100.00; interest paid $———. Deed issued March 25, 1884, to Rush J. Ealy. Present owner of contract, ———. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 6300.

Issued Feb. 3, 1887, to N. A. M. Kellogg, for the east one-half of northeast one-quarter and northeast one-quarter of southeast one-quarter of section 29, township 4 north, range 19 west, S. B. M., containing 120 acres. Agreed purchase price $———. Purchase price paid $303.85; interest paid $———. Deed issued May 19, 1887, to N. A. M. Kellogg. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 6275.

Issued Jan. 17, 1887, to S. A. Guiberson, for the southeast one-quarter of northeast one-quarter of section 33, township 4 north, range 19 west, S. B. M., containing 40 acres. Agreed purchase price $———. Purchase price paid $40; interest paid, $———. Deed issued Jan. 25, 1887, to S. A. Guiberson. Present owner of contract, ————. Patent No. 6. Issued Dec. 27, 1883, for the land described above.

Contract No. 9180.

Issued Jan. 19, 1888, to Francis Bates, for lots 2, 3 and 4 of section 33, township 4 north, range 19 west, S. B. M., containing 112 81-100 acres. Agreed purchase price $282.03. Purchase price paid $198.52; interest paid

$142.11. Deed issued ———— to ————. Present owner of contract, Thomas R. Bard, by assignment Sept. 6, 1889. Patent No. ———. Issued ———, for ——— acres of land described above. Title acquired under decree of U. S. Circuit Court, Feb. 8, 1886.

Contract No. 10,034.

Issued Feb. 18, 1889, to S. A. Guilberson, for the east one-half of southeast one-quarter of section 33, township 4 north, range 19 west, S. B. M., containing 80 acres. Agreed purchase price $———. Purchase price paid $410.00; interest paid, $———. Deed issued March 4, 1889, to S. A. Guilberson. Present owner of contract, ————. Patent No. ———. Issued ———, for ——— acres of land described above. Title acquired under decree of United States Circuit Court, Feb. 8, 1887.

Contract No. 3047.

Issued Jan. 14, 1884, to M. L. Wicks, for the north one-half of section 7, township 7 north, range 13 west, S. B. M., containing 318 20-100 acres. Agreed purchase price $——. Purchase price paid $1,047.95; interest paid,$——. Deed issued Sept. 23, 1889, to Thomas Menzies. Present owner of contract, ————. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 3040.

Issued Jan. 14, 1884, to M. L. Wicks, for all of fractional section 1, township 7 north, range 14, S. B. M., containing 636 86-100 acres. Agreed purchase price $———. Purchase price paid $2,147.24; interest paid, $———. Deed issued Oct. 16, 1890, to Mary H. Hughes.

Present owner of contract, ————. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 3041.

Issued Jan. 4, 1884, to M. L. Wicks, for all of fractional section 3, township 7 north, range 14 west, S. B. M., containing 631 20-100 acres. Agreed purchase price $———. Purchase price paid $2,109.57; interest paid, $———. Deed issued June 11, 1890, to Jennie L. Wicks. Present owner of contract, ————. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 3485.

Issued April 30, 1884, to M. L. Wicks, for all of fractional section 5, township 7 north, range 14 west, S. B. M., containing 628 74-100 acres. Agreed purchase price $———. Purchase price paid $2,024.19; interest paid, $———. Deed issued July 16, 1889, to Fairmount Land & Water Co. Present owner of contract, ————. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 3486.

Issued April 30, 1884, to M. L. Wicks, for the north one-half of section 7, township 7 north, range 14 west, S. B. M., containing 319 60-100 acres. Agreed purchase price $———. Purchase price paid $1,029.41; interest paid, $———. Deed issued July 16, 1889, to M. L. Wicks. Present owner of contract, ————. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 3042.

Issued Jan. 14, 1884, to M. L. Wicks, for the north one-half of section 9, township 7 north, range 14 west, S. B. M., containing 320 acres. Agreed purchase price, $———. Purchase price paid $1,024.00; interest paid, $———. Deed issued Jan. 19, 1889, to Mrs. C. L. True. Present owner of contract, ————. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 2888.

Issued Nov. 6, 1883, to W. R. Hughes, for the north one-half of section 11, township 7 north, range 14 west, S. B. M., containing 320 acres. Agreed purchase price $———. Purchase price paid $1,024.00; interest paid, $———. Deed issued Nov. 16, 1888, to W. R. Hughes. Present owner of contract, ————. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 3488.

Issued April 30, 1884, to M. L. Wicks, for all of section 1, township 7 north, range 15 west, S. B. M., containing 640 acres. Agreed purchase price $———. Purchase price paid $2,065.80; interest paid, $———. Deed issued July 16, 1889, to Fairmount Land and Water Co. Present owner of contract, ————. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 3489.

Issued April 30, 1884, to M. L. Wicks, for the north one-half of section 3, township 7 north, range 14 west, S. B. M., containing 320 acres. Agreed purchase price $———. Purchase price paid $1,030.20; interest paid, $———.

Deed issued July 16, 1889, to Fairmount Land and Water Co. Present owner of contract, ————. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 3881.

Issued Aug. 25, 1884, to Henry Hughes, for the northwest one-quarter of lot 2 of section 5, township 7 north, range 15 west, containing 240 acres. Agreed purchase price $———. Purchase price paid $1,066.71; interest paid, $———. Deed issued July 16, 1889, to Fairmount Land and Water Co. Present owner of contract, ——— ———. Patent No. 9. Issued Jan. 9, 1885, for the land described above.

Contract No. 11,206.

Issued Sept. 21, 1892, to W. M. Bailey and M. C. Bailey, for the fractional north one-half of section 7, township 7 north, range 18 west, S. B. M., containing 321 29-100 acres. Agreed purchase price $400.00. Purchase price paid $205.62; interest paid, $44.80. Deed issued ——— to ————. Present owner of contract, ————. Patent No. 27. Issued Nov. 28, 1894, for the land described above.

Contract No. 11,207.

Issued Sept. 21, 1892, to W. M. Bailey and M. C. Bailey, for the north one-half of section 9, township 7 north, range 18 west, S. B. M., containing 320 acres. Agreed purchase price, $400.00. Purchase price paid, $204.80. Interest paid, $44.80. Deed issued ———, to ————. Present owner of contract, ————. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 4955.

Issued November 7, 1885, to John C. Quinn, for the north one-half of northeast one-quarter, and southwest one-quarter of northeast one-quarter of section 1, township 8 north, range 14 west, S. B. M., containing 119.60 acres. Agreed purchase price, $399.00. Purchase price paid, $244.05. Interest paid, $245.74. Deed issued ———, to ———————. Present owner of contract, W. H. Pierce, by assignment, December 18, 1886. Patent No. 26. Issued December 22, 1894, for the land described above.

Contract No. 4954.

Issued November 7, 1885, to Robert Hellman, for the northwest one-quarter of section 1, township 8 north, range 14 west, S. B. M., containing 158.80 acres. Agreed purchase price, $397.00. Purchase price paid, $190.55. Interest paid, $111.15. Deed issued ———, to———————. Present owner of contract, John C. Quinn, by assignment December 2, 1885. Patent No. 26. Issued December 22, 1894, for the land described above.

Contract No. 4956.

Issued November 7, 1885, to H. J. Goethe, for the northwest one-quarter of southeast one-quarter of section 1, township 8 north, range 14 west, S. B. M., containing 40 acres. Agreed purchase price, $400.00. Purchase price paid, $81.60. Interest paid, $246.40. Deed issued ———, to ———————. Present owner of contract, John Eberle, by assignment, December 1, 1894. Patent No. 26. Issued December 22, 1894, for the land described above.

Contract No. 4957.

Issued November 7, 1885, to J. C. Quinn and H. J. Goethe, for the southwest one-quarter of section 1, township 8 north, range 14 west, S. B. M., containing 160 acres. Agreed purchase price, $400.00. Purchase price paid, $192.00. Interest paid, $112.00. Deed issued ———, to ————————. Present owner of contract, Margaret McCarty, by assignment, February 20, 1886. Patent No. 26. Issued December 22, 1894, for the land described above.

Contract No. 5028.

Issued December 3, 1885, to Daniel Kalin, for the northeast one-quarter of section 3, township 8 north, range 14 west, S. B. M., containing 159.77 acres. Agreed purchase price, $399.42. Purchase price paid, $236.40. Interest paid, $156.52. Deed issued ———, to ————————. Present owner of contract, ————————. Patent No. 26. Issued December 22, 1894, for the land described above.

Contract No. 5029.

Issued December 3, 1885, to James McCaw, for the northwest one-quarter of section 3, township 8 north, range 14 west, S. B. M., containing 159.65 acres. Agreed purchase price, $399.12. Purchase price paid, $236.27. Interest paid, $156.45. Deed issued ———, to ————————. Present owner of contract, Daniel Kalin, by assignment, December 26, 1885. Patent No. 26. Issued December 22, 1894, for the land described above.

Contract No. 5211.

Issued January 12, 1886, to Frederick W. Wilson, for the southeast one-quarter of section 3, township 8 north,

range 14 west, S. B. M., containing 160 acres. Agreed purchase price, $———. Purchase price paid, $512.00. Interest paid, $———. Deed issued May 27, 1895, to Frederick W. Wilson. Present owner of contract, ————. Patent No. 26. Issued December 22, 1894, for the land described above.

Contract No. 5458.

Issued March 16, 1886, to A. J. Pommer, for the southwest one-quarter of section 3, township 8 north, range 14 west, S. B. M., containing 160 acres. Agreed purchase price, $400.00. Purchase price paid, $512.00. Interest paid, $112.00. Deed issued ———, to ————. Present owner of contract, ————. Patent No. 26. Issued December 22, 1894, for the land described above.

Contract No. 5044.

Issued December 9, 1885, to Bernard Norton, for the north one-half of northeast one-quarter of section 5, township 8 north, range 14 west, S. B. M., containing 80.56 acres. Agreed purchase price, $401.40. Purchase price paid, $108.90. Interest paid, $135.12. Deed issued ——, to ————. Present owner of contract, Alexander Belford. Patent No. 26. Issued December 22, 1894, for the land described above.

Contract No. 4988.

Issued November 21, 1885, to George H. Appel, for the north one-half of northwest one-quarter of section 5, township 8 north, range 14 west, S. B. M., containing 80.88 acres. Agreed purchase price, $402.20. Purchase price

paid, $164.96. Interest paid, $247.72. Deed issued ———, to ———————. Present owner of contract, W. J. N. McCurdy. Patent No. 26. Issued December 22, 1894, for the land described above.

Contract No. 5019.

Issued December 1, 1885, to Wallace A. Briggs, for the north one-half of southwest one-quarter; southeast one-quarter, and north one-half of section 11, township 8 north, range 14 west, S. B. M., containing 560 acres. Agreed purchase price, $1,600. Purchase price paid, $1,754.98. Interest paid, $405.70. Deed issued ———, to ———————. Present owner of contract, ———————. Patent No. 26. Issued December 22, 1894, for the land described above.

Contract No. 7628.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northeast one-quarter of section 1, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $480. Purchase price paid, $153.76. Interest paid, $53.76. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7629.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 1, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $480. Purchase price paid,

$153.76. Interest paid, $53.76. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7630.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 1, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $480. Purchase price paid, $153.76. Interest paid, $53.76. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7631.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 1, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $480. Purchase price paid, $153.76. Interest paid, $53.76. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7684.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northeast one-quarter of section 3, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $640. Purchase price paid, $199.68. Interest paid, $71.68. Deed issued ———, to ———. Present owner of contract, Farming and

Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7685.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 3, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $640. Purchase price paid, $199.68. Interest paid, $71.68. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7686.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 3, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $800. Purchase price paid, $839.34. Interest paid, $44.80. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7687.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 3, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $800. Purchase price paid, $839.34. Interest paid, $44.80. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7688.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northeast one-quarter of section 5, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $800. Purchase price paid, $249.60. Interest paid, $89.60. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company, by assignment, March 25, 1889. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7689.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 5, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $800. Purchase price paid, $249.60. Interest paid, $89.60. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7690.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 5, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $800. Purchase price paid, $249.60. Interest paid, $89.60. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7691.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 5, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $800. Purchase price paid, $249.60. Interest paid, $89.60. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, ——, for —— acres of land described above.

Contract No. 7500.

Issued May 31, 1887, to John B. Young, for all of section 11, township 8 north, range 16 west, S. B. M., containing 640 acres. Agreed purchase price, $1,920. Purchase price paid, $599.04. Interest paid, $215.04. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 8406.

Issued September 28, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 13, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $480. Purchase price paid, $230.40. Interest paid, $134.40. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 8407.

Issued September 28, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 13, town-

ship 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $640. Purchase price paid, $307.20. Interest paid, $179.20. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 8408.

Issued September 28, 1887, to Geo. L. Arnold and C. M. Wells, for the north one-half of southwest one-quarter, and southeast one-quarter of southwest one-quarter of section 13, township 8 north, range 16 west, S. B. M., containing 120 acres. Agreed purchase price, $640. Purchase price paid, $230.40. Interest paid, $179.20. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 4538.

Issued April 21, 1885, to M. L. Wicks, for all of section 15, township 8 north, range 16 west, S. B. M., containing 640 acres. Agreed purchase price, $1,600. Purchase price paid, $499.20. Interest paid, $179.20. Deed issued ———, to ———————. Present owner of contract, Geo. L. Arnold and C. M. Wells. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7632.

Issued June 30, 1887, to G. L. Arnold and C. M. Wells, for the northeast one-quarter of section 23, township 8 north, range 16 west, S. B. M., containing 160 acres.

Agreed purchase price, $480. Purchase price paid, $122.88. Interest paid, $26.88. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7633.

Issued June 30, 1887, to G. L. Arnold and C. M. Wells, for the northwest one-quarter of section 23, township 8 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $480. Purchase price paid, $122.88. Interest paid, $26.88. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 3596.

Issued May 24, 1884, to Edward F. Beale, for the southeast one-quarter and lots 1, 2, 3, and 4 of section 9, township 8 north, range 17 west, S. B. M., containing 296 acres. Agreed purchase price, $296. Purchase price paid, $394.26. Interest paid, $98.26. Deed issued ———, to ———————. Present owner of contract, Mary E. Beale, by distribution of estate of E. F. Beale, deceased. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 3596.

Issued May 24, 1884, to Edward F. Beale, for lot 1 of section 27, township 8 north, range 17 west, S. B. M., containing 8.25 acres. Agreed purchase price, $8.25. Purchase price paid, $11.08. Interest paid, $2.83. Deed is-

sued ———, to ————————. Present owner of contract, Mary E. Beale, by distribution of estate of E. F. Beale, deceased. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 3596.

Issued May 24, 1884, to Edward F. Beale, for all of fractional section 29, township 8 north, range 17 west, S. B. M., containiag 458.49 acres. Agreed purchase price, $458.49. Purchase price paid, $610.71. Interest paid, $152.22. Deed issued ———, to ————————. Present owner of contract, Mary E. Beal, by distribution of estate of E. F. Beale, deceased. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 3596.

Issued May 24, 1884, to Edward F. Beale, for all of fractional section 31, township 8 north, range 17 west, S. B. M., containing 640.48 acres. Agreed purchase price, $640.48. Purchase price paid, $853.12. Interest paid, $212.64. Deed issued ———, to ————————. Present owner of contract, Mary E. Beale, by distribution of estate of E. F. Beale, deceased. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 3596.

Issued May 24, 1884, to Edward F. Beale, for all of section 33, township 8 north, range 17 west, S. B. M., containing 640 acres. Agreed purchase price, $640. Purchase price paid, $852.44. Interest paid, $212.44. Deed issued ———, to ————————. Present owner of contract, Mary E. Beale, by distribution of estate of E. F. Beale,

deceased. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 3596.

Issued May 24, 1884, to Edward F. Beale, for all of fractional section 35, township 8 north, range 17 west, S. B. M., containing 375.04 acres. Agreed purchase price, $375.04. Purchase price paid, $499.52. Interest paid, $124.48. Deed issued ———, to ———————. Present owner of contract, Mary E. Beale, by distribution of estate of E. F. Beale, deceased. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 11,330.

Issued January 18, 1894, to Joseph B. Lippincott, for the southwest one-quarter of southwest one-quarter, and lots 1, 2, and 3 of section 13, township 8 north, range 18 west, S. B. M., containing 98.64 acres. Agreed purchase price, $493.20. Purchase price paid, $181.50. Interest paid, $82.86. Deed issued ———, to ———————. Present owner of contract, ———————. Patent No. 27. Issued November 28, 1894, for the land described above.

Contra[illegible] 11,132.

Issued April 11, 1892, to George E. Lyman, for the northeast one-quarter of section 15, township 8 north, range 18 west, S. B. M., containing 160 acres. Agreed purchase price, $400. Purchase price paid, $169.60. Interest paid, $112. Deed issued ———, to ———————. Present owner of contract, ———————. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 11,133.

Issued April 11, 1892, to George R. Lyman, for the northwest one-quarter of section 15, township 8 north, range 18 west, S. B. M., containing 160 acres. Agreed purchase price, $400. Purchase price paid, $169.60. Interest paid, $112. Deed issued ———, to ————————. Present owner of contract, ————————. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 11,134.

Issued April 11, 1892, to George R. Lyman, for the southeast one-quarter of section 15, township 8 north, range 18 west, S. B. M., containing 160 acres. Agreed purchase price, $400. Purchase price paid, $169.60. Interest paid, $112. Deed issued ———, to ————————. Present owner of contract, ————————. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 11,135.

Issued April 11, 1892, to George R. Lyman, for the southwest one-quarter of section 15, township 8 north, range 18 west, S. B. M., containing 160 acres. Agreed purchase price, $400. Purchase price paid, $169.60. Interest paid, $112. Deed issued ———, to ————————. Present owner of contract, ————————. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 11,378.

Issued April 12, 1895, to Mrs. Elizabeth Schleismayer, for the southeast one-quarter of southeast one-quarter, and west one-half of southeast one-quarter of section 17, township 8 north, range 18 west, S. B. M., containing 120

acres. Agreed purchase price, $960. Purchase price paid, $245.76. Interest paid, $53.76. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 10,955.

Issued January 25, 1892, to W. M. Bailey and M. C. Bailey for the east one-half of section 21, township 8 north, range 18 west, S. B. M., containing 320 acres. Agreed purchase price, $1,360. Purchase price paid, $307.20. Interest paid, $76.16. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 11,148.

Issued May 13, 1892, to W. M. Bailey and M. C. Bailey, for the southwest one-quarter of section 21, township 8 north, range 18 west, S. B. M., containing 160 acres. Agreed purchase price, $400. Purchase price paid, $102.40. Interest paid, $22.40. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 10,955.

Issued January 25, 1892, to W. M. Bailey and M. C. Bailey, for all of section 23, township 8 north, range 18 west, S. B. M., containing 640 acres. Agreed purchase price, $2,720. Purchase price paid, $739.28. Interest paid, $152.32. Deed issued ———, to ———.

Present owner of contract, ————————. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 5057.

Issued December 11, 1885, to Charles Schwartz, for the north one-half of southeast one-quarter, southwest one-quarter, and north one-half of section 7, township 9 north, range 13 west, S. B. M., containing 572.04 acres. Agreed purchase price, $1,430.10. Purchase price paid, $1,589.66. Interest paid, $159.56. Deed issued ———, to ————. Present owner of contract, ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 6025.

Issued Nov. 10, 1886, to J. D. Frederickson, for the west one-half of northwest one-quarter of section 9, township 9 north, range 13 west, S. B. M., containing 80 acres. Agreed purchase price $400.00. Purchase price paid $73.60; interest paid, $67.20. Deed issued —— to ———— ——. Present owner of contract, ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4472.

Issued March 24, 1885, to Martin Kastler, for the northwest one-quarter of southeast one-quarter, west one-half of northeast one-quarter, and west one-half of section 17, township 9 north, range 13 west, S. B. M., containing 440 acres. Agreed purchase price, $1,600. Purchase price paid, $528. Interest paid, $448. Deed issued ———, to ————————. Present owner of contract, ————————. Patent No. 22. Issued July 10. 1894, for the land described above.

Contract No. 4493.

Issued Mar. 31, 1885, to Simon S. Ash, for all of section 19, township 9 north, range 13 west, S. B. M., containing 651.38 acres. Agreed purchase price, $1,628.45. Purchase price paid, $1,055.21. Interest paid, $729.52. Deed issued ———, to ———————. Present owner of contract, ———————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4494.

Issued March 31, 1885, to Lewis E. Hillen, for the northeast one-quarter of northwest one-quarter, west one-half of northwest one-quarter, and northwest one-quarter of southwest one-quarter of section 31, township 9 north, range 13 west, S. B. M., containing 171.01 acres. Agreed purchase price, $1,639.35. Purchase price paid, $277.58. Interest paid, $734.40. Deed issued ———, to ———. Present owner of contract, Mrs. Ottellia Gruehler. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 5041.

Issued December 8, 1885, to Benjamin Steinauer, for the fractional north one-half of section 19, township 9 north, range 14 west, S. B. M., containing 318 acres. Agreed purchase price, $795. Purchase price paid, $470.64. Interest paid, $311.64. Deed issued ———, to ———————. Present owner of contract, ———————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 5042.

Issued December 8, 1885, to Rudolf J. Smith, for the southeast one-quarter of section 19, township 9 north, range 14 west, S. B. M., containing 160 acres. Agreed purchase price, $400. Purchase price paid, $483.47. Interest paid, $83.47. Deed issued ———, to ————————. Present owner of contract, ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 5043.

Issued December 8, 1885, to Xaver Schunrizer, for the southwest one-quarter of section 19, township 9 north, range 14 west, S. B. M., containing 159.22 acres. Agreed purchase price, $398.05. Purchase price paid, $235.64. Interest paid, $156.03. Deed issued ——, to ————————. Present owner of contract, ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4593.

Issued May 9, 1885, to Kenneth McK. Ham, for the east one-half of section 21, township 9 north, range 14 west, S. B. M., containing 320 acres. Agreed purchase price, $800. Purchase price paid, $518.40. Interest paid, $358.40. Deed issued ———, to ————————. Present owner of contract, ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4672.

Issued June 15, 1885, to J. L. Pavkovich, for the west one-half of section 21, township 9 north, range 14 west, S. B. M., containing 320 acres. Agreed purchase price, $800.

Purchase price paid, $339.20. Interest paid, $179.20. Deed issued ———, to ————————. Present owner of contract, ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4576.

Issued May 5, 1885, to George E. Bates, for all of section 23, township 9 north, range 14 west, S. B. M., containing 640 acres. Agreed purchase price, $1,600. Purchase price paid, $1,516. Interest paid, $1,044.48. Deed issued ———, to ————————. Present owner of contract, Joseph Sims. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4533.

Issued April 16, 1885, to Frank F. Freeman, for all of section 25, township 9 north, range 14 west, S. B. M., containing 640 acres. Agreed purchase price, $1,600. Purchase price paid, $1,036.80. Interest paid, $716.08. Deed issued ———, to ————————. Present owner of contract, ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4603.

Issued May 12, 1885, to R. McD. Scriver, for the north one-half of section 29, township 9 north, range 14 west, S. B. M., containing 320 acres. Agreed purchase price, $800. Purchase price paid, $339.20. Interest paid, $179.20. Deed issued ———, to ————————. Present owner of contract, Farming and Fruit Land Company. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4985.

Issued November 21, 1885, to John C. Quinn, for the north one-half of section 29, township 9 north, range 12 west, S. B. M., containing 320 acres. Agreed purchase price, $800. Purchase price paid, $339.20. Interest paid, $179.20. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4986.

Issued November 21, 1885, to H. J. Goethe, for the south one-half of section 29, township 9 north, range 14 west, S. B. M., containing 320 acres. Agreed purchase price, $800. Purchase price paid, $339.20. Interest paid, $179.20. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4987.

Issued November 21, 1885, to Thomas Norton, for the east one-half of section 31, township 9 north, range 14 west, S. B. M., containing 320 acres. Agreed purchase price, $800. Purchase price paid, $249.60. Interest paid, $89.60. Deed issued ———, to ———————. Present owner of contract, D. Bayles. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4998.

Issued November 25, 1885, to James McCaw, for the northwest one-quarter of section 31, township 9 north, range 14 west, S. B. M., containing 156.59 acres. Agreed

purchase price, $———. Purchase price paid, $588.75. Interest paid, $———. Deed issued November 21, 1894, to James McCaw. Present owner of contract, ———. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 4999.

Issued November 25, 1885, to Rupert M. Meller, for the southwest one-quarter of section 31, township 9 north, range 14 west, S. B. M., containing 154.69 acres. Agreed purchase price, $386.72. Purchase price paid, $185.60. Interest paid, $108.25. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 5026.

Issued December 3, 1885, to John Lindenmayer, for the north one-half of section 33, township 9 north, range 14 west, S. B. M., containing 320 acres. Agreed purchase price, $800. Purchase price paid, $1,051.10. Interest Present owner of contract, Mrs. Mary L. Gillett. Patent paid, $251.10. Deed issued ———, to ———. No. 22. Issued July 10, 1894, for the land described above.

Contract No. 5027.

Issued December 3, 1885 to John C. Quinn, for the south one-half of section 33, township 9 north, range 14 west, S. B. M., containing 320 acres. Agreed purchase price, $800. Purchase price paid, $737.70. Interest paid, $259.90. Deed issued ———, to ———. Present owner of contract, Mrs. Mary L. Gillett. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 5018.

Issued December 1, 1885, to Wallace S. Briggs, for all of section 35, township 9 north, range 14 west, S. B. M., containing 640 acres. Agreed purchase price, $———. Purchase price paid, $2,005.70. Interest paid, $———. Deed issued September 18, 1894, to Wallace A. Briggs. Present owner of contract, ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 9654.

Issued June 1, 1888, to William Sexton, for the northeast one-quarter of section 17, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price, $400. Purchase price paid, $102.40. Interest paid, $22.40. Deed issued ———, to ————————. Present owner of contract, ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 9655.

Issued June 1, 1888, to William Sexton, for the southeast one-quarter of section 17, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price, $400. Purchase price paid, $102.40. Interest paid, $22.40. Deed issued ———, to ————————. Present owner of contract, ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7678.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 17, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price, $400. Purchase price paid,

$124.80. Interest paid, $44.80. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7679.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 17, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price, $400. Purchase price paid, $124.80. Interest paid, $44.80. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7674.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northeast one-quarter of section 19, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price, $400. Purchase price paid, $124.80. Interest paid, $44.80. Deed issued ———, to ———————. Present owner of contract, Farming and Fruit Land Company. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7675.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 19, township 9 north, range 15 west, S. B. M., containing 158.32 acres. Agreed purchase price $395.80. Purchase price paid $123.48; interest paid $44.32. Deed issued ——— —— to ———————. Present owner of contract, Farm-

ing and Fruit Land Co. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7676.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 19, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price $400.00. Purchase price paid $124.80; interest paid $44.80. Deed issued———— to ————. Present owner of contract Farming and Fruit Land Co. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7677.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 19, township 9 north, range 15 west, S. B. M., containing 157.52 acres. Agreed purchase price $393.80. Purchase price paid $122.86; interest paid, $44.10. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7758.

Issued July 11, 1887, to Martin Seigel, for the southeast one-quarter of section 21, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $471.05; interest paid $———. Deed issued January 10, 1896, to Martin Seigel. Present owner of contract————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7759.

Issued July 11, 1887, to Martin Seigel, for the southwest one-quarter of section 21, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $471.05; interest paid $———. Deed issued January 10, 1896, to Martin Seigel. Present owner of contract ————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7733.

Issued July 9, 1887, to Julius H. Pinkert, for the north one-half of section 23, township 9 north, range 15 west, S. B. M., containing 320 acres. Agreed purchase price $800. Purchase price paid $473.60; interest paid $313.60. Deed issued———— to ————. Present owner of contract N. G. Seibel. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7734.

Issued July 9, 1887, to Julius H. Pinkert, for the south one-half of section 23, township 9 north, range 15 west, S. B. M., containing 320 acres. Agreed purchase price $800. Purchase price paid $473.60; interest paid $313.16. Deed issued ———— to ————. Present owner of contract N. G. Seibel. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7620.

Issued June 28, 1887, to Benjamin F. Smith, for the northeast one-quarter of section 25, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed

purchase price $400. Purchase price paid $236.80; interest paid $156.80. Deed issued ———— to ———— ———. Present owner of contract ————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7621.

Issued June 28, 1887, to Benjamin F. Smith, for the northwest one-quarter of section 25, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price $400. Purchase price paid $214.40; interest paid $156.80. Deed issued ———— to ———— ———. Present owner of contract E. C. Sessions. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 6707.

Issued April 11, 1887, to Benjamin F. Nutting, for the southeast one-quarter of section 25, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $580.45; interest paid $———. Deed issued May 3, 1885, to O. P. Willis and A. Eckman. Present owner of contract ————. Patent No.22. Issued July 10, 1894, for the land described above.

Contract No. 6708.

Issued April 11, 1887, to G. C. Mitchell, for the southwest one-quarter of section 25, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price $400.00. Purchase price paid $214.40; interest paid $134.40. Deed issued ———— to ————

———. Present owner of contract James G. Monroe. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7735.

Issued July 9, 1887, to N. G. Seibel, for the north one-half of section 27, township 9 north, range 15 west, S. B. M., containing 320 acres. Agreed purchase price $———. Purchase price paid $1179.95; interest paid $———. Deed issued January 10, 1896, to N. G. Seibel. Present owner of contract ————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7736.

Issued July 9, 1887, to N. G. Seibel, for the south one-half of southwest one-quarter and southeast one-quarter of section 27, township 9 north, range 15 west, S. B. M., 240 acres. Agreed purchase price $800.00. Purchase price paid $893.93; interest paid $222.15. Deed issued ———— to ————. Present owner of contract Julius H. Pinkert. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7728.

Issued July 16, 1887, to Judge W. Dayan, for the northeast one-quarter of section 35, township 9 north, range 15 west, S. B. M., containing 160 acres. Agreed purchase price $400.00. Purchase price paid $236.80; interest paid $156.80. Deed issued ———— to ————. Present owner of contract Maria A. Dray. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7737.

Issued July 9, 1887, to N. G. Seibel, for the north one-half of northwest one-quarter of section 35, township 9 north, range 15 west, S. B. M., containing 80 acres. Agreed purchase price $800.00. Purchase price paid $118.40. Interest paid $313.60. Deed issued ———— to ————. Present owner of contract Maria A. Dray. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7634.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northeast one-quarter of section 13, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $160.00. Purchase price paid $49.92. Interest paid $17.92. Deed issued ———— to ————. Present owner of contract Farming and Fruit Land Co. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7635.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 13, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $160. Purchase price paid $49.92; interest paid $17.92. Deed issued———— to ————. Present owner of contract Farming and Fruit Land Co. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7636.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 13, town-

ship 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $160.00. Purchase price paid $49.92; interest paid $17.92. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7637.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 13, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $160.00. Purchase price paid $49.92; interest paid $17.92. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7638.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northeast one-quarter of section 19, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $400.00. Purchase price paid $124.80; interest paid $44.80. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7639.

Issued June 30,1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 19, township 9 north, range 16 west, S. B. M., containing 161.80 acres. Agreed purchase price $405.50. Purchase price paid

$126.20; interest paid $45.30. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7640.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 19, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $400.00. Purchase price paid $124.80; interest paid $44.80. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7641.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 19, township 9 north, range 16 west, S. B. M., containing 161.42 acres. Agreed purchase price $403.55. Purchase price paid $125.91; interest paid $45.20. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7642.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northeast one-quarter of section 21, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $240.00. Purchase price paid $74.88; interest paid $26.88. Deed issued ———— to ————. Present owner of contract, Farm-

ing and Fruit Land Co. Patent No. 27. Issued November 28, 1896, for one hundred and twenty acres of land described above.

Contract No. 7643.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 21, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $240.00. Purchase price paid $74.88; interest paid $26.88. Deed issued ——— to ———. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7644.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 21, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $240.00. Purchase price paid $74.88; interest paid $26.88. Deed issued ——— to ———. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7645.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 21, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $240.00. Purchase price paid $74.88; interest paid $26.88. Deed issued ——— to ———. Present owner of contract Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 9663.

Issued June 6, 1888, to Elizabeth A. Beck, for the north one-half of section 23, township 9 north, range 16 west, S. B. M., containing 320 acres. Agreed purchase price $———. Purchase price paid $1091.68; interest paid $———. Deed issued October 9, 1895, to Elizabeth A. Beck. Present owner of contract ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 9621.

Issued May 21, 1888, to Myra Parish, for the northeast one-quarter of southeast one-quarter of section 23, township 9 north, range 16 west, S. B. M., containing 40 acres. Agreed purchase price $400.00. Purchase price paid $31.10; Interest paid $44.80. Deed issued ———— to ———. Present owner of contract, ————————. Patent No. 22. Issued July 10, 1894, for the land described above.

Contract No. 7646.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northeast one-quarter of section 25, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $200.00. Purchase price paid $62.40; interest paid $22.40. Deed issued ———— to ————————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. (Main line.) Issued July 27, 1895, for the east one-half of northeast one-quarter, 80 acres of land described above. Patent No. 27. (Branch line.) Issued November 28, 1894, for the west one-half of the northeast one-quarter 80 acres of land described above.

Contract No. 7647.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 25, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $200.00. Purchase price paid $62.40; interest paid $22.40. Deed issued ——— to ———. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7648.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 25, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $200.00. Purchase price paid $62.40; interest paid $22.40. Deed issued ——— to ———. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. (Main line.) Issued July 27, 1895, for the 40 acres of land described above. Patent No. 27. (Branch line.) Issued November 28, 1894, for 120 acres of land described above.

Contract No. 7649.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 25, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $200.00. Purchase price paid $62.40; interest paid $22.40. Deed issued ——— to ———. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7650.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northeast one-quarter of section 27, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $160.00. Purchase price paid $49.92; interest paid $17.92. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7651.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 27, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $160.00. Purchase price paid $49.92; interest paid $17.92. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7652.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 27, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $160.00. Purchase price paid $49.92; interest paid $17.92. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7653.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 27, town-

ship 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $160.00. Purchase price paid $49.92; interest paid $17.92. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7654.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 29, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $400.00. Purchase price paid $124.80; interest paid $44.80. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7655.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 29, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $400.00. Purchase price paid $124.80; interest paid $44.80. Deed issued ———— to ————. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 9339.

Issued February 10, 1888, to Isaac H. Bell, for the northeast one-quarter of section 29, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $400.00. Purchase price paid $393.20; in-

terest paid $193.20. Deed issued ———— to ———— ————. Present owner of contract, ————. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 9340.

Issued February 10, 1888, to William Hillabolt, for the southeast one-quarter of section 29, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $———. Purchase price paid $562.40; interest paid $———. Deed issued May 20, 1895, to Wm. Hillabolt. Present owner of contract ————. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 8772.

Issued November 12, 1887, to G. L. Denison, for the northeast one-quarter of section 31, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price $480. Purchase price paid $430.92. Interest paid $234.92. Deed issued ———— to ———— ————. Present owner of contract, Thomas R. Plant. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7657.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 31, township 9 north, range 16 west, S. B. M., containing 160.48 acres. Agreed purchase price, $481.44. Purchase price paid, $150.20; interest paid, $53.92. Deed issued ———— to ————. Present owner of contract, Farming

and Fruit Land Co. Patent No. 27. Issued Nov. 28, 1894, for the land described above.

Contract No. 7658.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells for the northeast one-quarter of section 33, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $240. Purchase price paid, $74.88; interest paid, $26.88. Deed issued ——— to ———. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued Nov. 28, 1894, for the land described above.

Contract No. 7659.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells for the northwest one-quarter of section 33, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $240. Purchase price paid, $74.88; interest paid, $26.88. Deed issued ——— to ———. Present owner of contract, Farming and Fruit Land Co. Patent No. 27. Issued Nov. 28, 1894, for the land described above.

Contract No. 7660.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 33, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $240. Purchase price paid, $74.88. Interest paid, $26.88. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7661.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 33, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $240. Purchase price paid, $74.88. Interest paid, $26.88. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7662.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northeast one-quarter of section 35, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $240. Purchase price paid, $74.88. Interest paid, $26.88. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7663.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the northwest one-quarter of section 35, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $240. Purchase price paid, $74.88. Interest paid, $26.88. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7664.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southeast one-quarter of section 35, town-

ship 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $240. Purchase price paid, $74.88. Interest paid, $26.88. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 7665.

Issued June 30, 1887, to Geo. L. Arnold and C. M. Wells, for the southwest one-quarter of section 35, township 9 north, range 16 west, S. B. M., containing 160 acres. Agreed purchase price, $240. Purchase price paid, $74.88. Interest paid, $26.88. Deed issued ———, to ———. Present owner of contract, Farming and Fruit Land Company. Patent No. 27. Issued November 28, 1894, for the land described above.

Contract No. 3596.

Issued May 24, 1884, to Edward F. Beale, for lots 1, 2, 3, and 4 of section 33, township 9 north, range 17 west, S. B. M., containing 136 acres. Agreed purchase price, $136. Purchase price paid, $181.17. Interest paid, $45.17. Deed issued ———, to ———. Present owner of contract, Mary E. Beale, by distribution of estate of E. F. Beale, deceased. Patent No. 27. Issued November 28, 1894, for the land described above.

[Endorsed]: No. 600. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States vs. The Southern Pacific Railroad Co. Supplemental Answer. Filed Jul. 27, 1896. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., Rooms, 61-2, Union Trust Building, San Francisco, Cal., Atty. for ———.

Order.

At a stated term, towit, the August term, A. D. 1898, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles on Monday the thirty-first day of August, in the year of our Lord, one thousand eight hundred and ninety-six. Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

THE UNITED STATES OF AMERICA, Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants.

No. 600.

Joseph H. Call, Esq., special assistant United States attorney, present for the government, and Wm. Singer, Jr., Esq., present for defendant. On motion of counsel for complainant, and with the consent of defendants' counsel, it is ordered that this cause be set for September 18, 1896, at 10:30 o'clock A. M., for hearing. On motion of Wm. Singer, Jr., Esq., of counsel for defendants, and by consent of Joseph H. Call, Esq., of counsel for complainants, it is ordered that defendants' answer filed on January 10, 1895, be amended by the clerk of this Court by striking out the words "described in the exhibit 'A' annexed to" and substituting the words "mentioned in," in line 4 of page 20 thereof, and by striking out the words "described in the exhibit 'A' annexed to" and substitut-

ing the words "mentioned in" in lines 20 and 21 of page 24 thereof; and by striking out the words "described in the exhibit 'A' attached to," and substituting the words "mentioned in," in line 23 of page 33 thereof; and by striking out the words "described in the exhibit 'A' attached to," and substituting the words "mentioned in" in line 19 of page 34 thereof; and it is further ordered, on motion of Wm. Singer, Jr., Esq., attorney for defendants, and by consent of Joseph H. Call, Esq., attorney for complainants, that the defendants' supplemental answer filed on July 27, 1896, be amended by the clerk of this Court by striking out the words "exhibit 'A' to," in line 7 of page 2 thereof; and by striking out the words "exhibit 'A,'" and substituting the words "bill of complaint" in lines 10 and 11 of page 2 thereof. On motion of Wm. Singer, Jr., Esq., of counsel for defendants, and by consent of Joseph H. Call, Esq., of counsel for complainants, it is ordered that "Exhibit A" attached to the defendants' answer, shall be considered as offered in evidence as defendants' exhibit No. 325, subject to complainants' objection to the same as incompetent, irrelevant and immaterial.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court August 31, 1896, in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this sixth day of June, A. D. 1898.

WM. M. VAN DYKE,
Clerk.

[Seal of Court.]

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Certified copy order setting cause for hearing and amending answer. Filed June 6, 1898. Wm. M. Van Dyke, Clerk.

At a stated term, towit, the August term, A. D. 1897, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles, on Friday, the seventh day of January, in the year of our Lord one thousad eight hundred and ninety-eight. Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

THE UNITED STATES OF AMERICA,
Complainants.

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.

No. 600.

Order Dismissing Bill as to Certain Lands.

At a stated term of the United States Circuit Court for the Southern District of California, in open court on this

seventh day of January, 1898, on motion of Joseph H. Call, Esq., special assistant United States attorney, and of counsel for complainants, it is hereby ordered that the bill of complaint in the above entitled cause be, and the same is hereby dismissed, without prejudice as to the lands hereinafter described, without in any way affecting the status of said suit and the right of the United States to prosecute the same as to the remainder of said lands described in the said bill of complaint, the lands so dismissed being described as follows, to wit:

The fractional northeast one-fourth of section 5, township 1 south, range 6 west.

The northwest one-fourth of section 9, township 1 south, range 6 west.

The north one-half of section 21, township 1 south, range 7 west.

The south one-half of section 21, township 1 south, range 7 west.

The east one-half of northeast one-fourth and east one-half of southeast one-fourth of section 1, township 1 south, range 8 west.

The west one-half of northeast one-fourth; west one-half of southeast one-fourth and west one-half of section 1, township 1 south, range 8 west.

All of section 11, township 1 south, range 8 west.

All of fractional section 15, township 1 south, range 8 west.

Lots 1 and 2 of section 21, township 1 south, range 8 west.

The north one-half of northeast one-fourth of section 23, township 1 south, range 8 west.

Lots 1, 2, 3, and 4 of section 25, township 1 south, range 8 west.

The south one-half of southeast one-fourth and south one-half of southwest one-fourth of section 27, township 1 south, range 8 west.

Lots 6 and 7 of section 33, township 1 south, range 9 west.

Lot 5 of section 33, township 1 south, range 9 west.

The south one-half of southwest one-fourth and lots 1, 2, 3, and 4 of section 35, township 1 south, range 9 west.

Lot 1 of section 1, township 1 south, range 11 west.

Lot 1 of northwest one-fourth of section 7, township 1 south, range 11 west.

Lot 5 of southeast one-fourth of section 7, township 1 south, range 11 west.

Lot 6 of southeast one-fourth of section 7, township 1 south, range 11 west.

Lots 7 and 8 of northeast one-fourth of section 7, township 1 south, range 11 west.

The east one-half of northeast one-fourth and lot 6 of section 13, township 1 south, range 11 west.

The west one-half of northeast one-fourth; east one-half of northwest one-fourth; north one-half of southwest one-fourth and lots 1, 2, 3, 4, and 5 of section 13, township 1 south, range 11 west.

Lot 1 of section 3, township 1 south, range 12 west.

Lot 5 of section 3, township 1 south, range 12 west.

Lots 2 and 3 of section 5, township 1 south, range 12 west.

The northeast one-fourth of section 7, township 1 south, range 12 west.

Northeast one-fourth of southwest one-fourth of section 7, township 1 south, range 12 west.

Lots 3 and 4 of section 7, township 1 south, range 12 west.

Lots 1 and 2 of section 11, township 1 south, range 12 west.

The northwest one-fourth of northwest one-fourth of section 11, township 1 south, range 12 west.

The southeast one-fourth of northwest one-fourth and northeast one-fourth of southwest one-fourth of section 11, township 1 south, range 12 west.

The east one-half of northeast one-fourth of section 13, township 1 south, range 12 west.

The northeast one-fourth of section 15, township 1 south, range 12 west.

The southeast one-fourth of southeast one-fourth and northeast one-fourth of section 17, township 1 south, range 12 west.

The northeast one-fourth of southeast one-fourth of section 17, township 1 south, range 12 west.

The north one-half of southeast one-fourth of section 19, township 1 south, range 12 west.

The northwest one-fourth of northwest one-fourth of section 19, township 1 south, range 12 west.

The northwest one-fourth of southwest one-fourth and north one-half of section 29, township 1 south, range 12 west.

The southeast one-fourth of section 29, township 1 south, range 12 west.

The east one-half of northeast one-fourth; east one-half of southeast one-fourth and northwest one-fourth of section 31, township 1 south, range 12 west.

Lot 1 of section 11, township 1 south, range 13 west.

The northeast one-fourth of northeast one-fourth; southeast one-fourth of southeast one-fourth and lots 1 and 4 of section 13, township 1 south, range 13 west.

Lots 3 and 4 of section 25, township 1 south, range 13 west.

Lot 10 of section 3, township 1 south, range 14 west.

The south one-half of northeast one-fourth of section 3, township 1 south, range 14 west.

The east one-half of southeast one-fourth and lots 1 and 2 of section 3, township 1 south, range 14 west.

The southwest one-fourth of northwest one-fourth and lots 3, 4, 5, and 7 of section 3, township 1 south, range 14 west.

The east one-half of southwest one-fourth; southwest one-fourth of southwest one-fourth; east one-half of northeast one-fourth and southeast one-fourth of section 5, township 1 south, range 14 west.

The northwest one-fourth of southwest one-fourth; west one-half of northeast one-fourth and northwest one-fourth of section 5, township 1 south, range 14 west.

The east one-half of northeast one-fourth of section 7, township 1 south, range 14 west.

The west one-half of northeast one-fourth of section 7, township 1 south, range 14 west.

The northwest one-fourth of section 7, township 1 south, range 14 west.

The north one-half of southeast one-fourth and lot 3 of section 7, township 1 south, range 14 west.

The southwest one-fourth of southeast one-fourth of section 7, township 1 south, range 14 west.

Northwest one-fourth of northwest one-fourth of section 11, township 1 south, range 14 west.

The east one-half of southeast one-fourth of section 11, township 1 south, range 14 west.

The west one-half of southeast one-fourth of section 11, township 1 south, range 14 west.

Lots 1, 2, 3, and 4 of section 23, township 1 south, range 14 west.

Northwest one-fourth of section 25, township 1 south, range 14 west.

Lot 1, southeast one-fourth of northeast one-fourth; north one-half of southeast one-fourth; southeast one-fourth of southeast one-fourth, and east one-half of southwest one-fourth of section 1, township 1 south, range 15 west.

The east one-half of northwest one-fourth; southwest one-fourth of northeast one-fourth and lot 2 of section 1, township 1 south, range 15 west.

The southwest one-fourth of southeast one-fourth of section 1, township 1 south, range 15 west.

The southwest one-fourth of southwest one-fourth of section 1, township 1 south, range 15 west.

The northwest one-fourth of southwest one-fourth of section 1, township 1 south, range 15 west.

The west one-half of southeast one-fourth and west one-half of northeast one-fourth of section 11, township 1 south, range 15 west.

The northeast one-fourth of southeast one-fourth and southeast one-fourth of northeast one-fourth of section 11, township 1 south, range 15 west.

The northeast one-fourth of northeast one-fourth of section 11, township 1 south, range 15 west.

South one-half of northwest one-fourth and southwest one-fourth of section 11, township 1 south, range 15 west.

The southeast one-fourth of southeast one-fourth of section 11, township 1 south, range 15 west.

Lot 1 of section 3, township 2 south, range 11 west.

The northeast one-fourth of southeast one-fourth and south one-half of southeast one-fourth of section 9, township 2 south, range 11 west.

Lots 1 and 2 of section 3, township 2 south, range 13 west.

Fraction of lot 1 of section 5, township 2 south, range 13 west.

Fraction of lot 1 of section 5, township 2 south, range 13 west.

The south one-half of northeast one-fourth of section 11, township 2 south, range 14 west.

The southwest one-fourth of section 13, township 2 south, range 14 west.

All of fractional section 17, township 2 south, range 14 west.

The southwest one-fourth of northeast one-fourth; west one-half of southeast one-fourth and west one-half of section 11, township 1 north, range 4 west.

The fractional southwest one-fourth of section 13, township 1 north, range 4 west.

The fractional northwest one-fourth of section 27, township 1 north, range 5 west.

Lots 2 and 3 of northeast one-fourth of section 27, township 1 north, range 5 west.

The fractional southeast one-fourth of section 27, township 1 north, range 5 west.

The southwest one-fourth of section 27, township 1 north, range 5 west.

The west one-half of southwest one-fourth of section 9, township 1 north, range 6 west.

The west one-half of section 11, township 1 north, range 6 west.

The south one-half of southeast one-fourth of section 13, township 1 north, range 6 west.

The north one-half of southeast one-fourth of section 13, township 1 north, range 6 west.

The southwest one-fourth of section 13, township 1 north, range 6 west.

The northeast one-fourth of section 15, township 1 north, range 6 west.

The northwest one-fourth of section 15, township 1 north, range 6 west.

The east one-half of southeast one-fourth of section 15, township 1 north, range 6 west.

The west one-half of southeast one-fourth of section 15, township 1 north, range 6 west.

The east one-half of southwest one-fourth of section 15, township 1 north, range 6 west.

The west one-half of southwest one-fourth of section 15, township 1 north, range 6 west.

east one-half of northeast one-fourth of section 17, township 1 north, range 6 west.

The east one-half of northeast one-fourth and west one-half of southeast one-fourth of section 23, township 1 north, range 6 west.

The southwest one-fourth of northeast one-fourth; southeast one-fourth of northwest one-fourth and southwest one-fourth of section 23, township 1 north, range 6 west.

The west one-half of northwest one-fourth of section 23, township 1 north, range 6 west.

The east one-half of southeast one-fourth of section 23, township 1 north, range 6 west.

The northwest one-fourth of northwest one-fourth; northeast one-fourth of northeast one-fourth; south one-half of northeast one-fourth; south one-half of northwest one-fourth and south one-half of section 25, township 1 north, range 6 west.

The northwest one-fourth of northeast one-fourth and northeast one-fourth of northwest one-fourth of section 25, township 1 north, range 6 west.

The northwest one-fourth of northeast one-fourth of section 27, township 1 north, range 6 west.

The east one-half of northeast one-fourth of section 27, township 1 north, range 6 west.

The southwest one-fourth of northeast one-fourth; northwest one-fourth of southeast one-fourth and northwest one-fourth of section 27, township 1 north, range 6 west.

The east one-half of southeast one-fourth of section 27, township 1 north, range 6 west.

The southwest one-fourth of southeast one-fourth of section 27, township 1 north, range 6 west.

The east one-half of southwest one-fourth of section 27, township 1 north, range 6 west.

The west one-half of southwest one-fourth of section 27, township 1 north, range 6 west.

The west one-half of section 29, township 1 north, range 6 west.

The east one-half of southeast one-fourth of section 29, township 1 north, range 6 west.

The west one-half of southeast one-fourth of section 29, township 1 north, range 6 west.

The east one-half of northeast one-fourth of section 31, township 1 north, range 6 west.

The north one-half of southwest one-fourth and west one-half of northeast one-fourth of section 31, township 1 north, range 6 west.

The fractional northwest one-fourth of section 31, township 1 north, range 6 west.

The west one-half of southeast one-fourth and south one-half of southwest one-fourth of section 31, township 1 north, range 6 west.

The southeast one-fourth of southeast one-fourth of section 31, township 1 north, range 6 west.

The northeast one-fourth of southeast one-fourth of section 31, township 1 north, range 6 west.

The northeast one-fourth of section 35, township 1 north, range 6 west.

The east one-half of section 35, township 1 north, range 6 west.

The northwest one-fourth of section 35, township 1 north, range 6 west.

The southwest one-fourth of section 35, township 1 north, range 6 west.

Lots 1 and 2 of section 21, township 1 north, range 7 west.

Lots 3 and 4 of section 21, township 1 north, range 7 west.

The fractional east one-half of section 27, township 1 north, range 7 west.

The northwest one-fourth of northeast one-fourth; east one-half of northeast one-fourth; southeast one-fourth of southeast one-fourth and lots 1, 2, 3, and 4 of section 35, township 1 north, range 7 west.

The northeast one-fourth of northwest one-fourth of section 13, township 1 north, range 8 west.

The southeast one-fourth of northwest one-fourth of section 13, township 1 north, range 8 west.

The southwest one-fourth of northwest one-fourth of section 13, township 1 north, range 8 west.

The northwest one-fourth of northwest one-fourth of section 13, township 1 north, range 8 west.

The west one-half of southwest one-fourth of section 13, township 1 north, range 8 west.

The southeast one-fourth of section 19, township 1 north, range 8 west.

The east one-half of southwest one-fourth and southeast one-fourth of section 21, township 1 north, range 8 west.

The southwest one-fourth of southwest one-fourth of section 21, township 1 north, range 8 west.

The northwest one-fourth of southwest one-fourth of section 21, township 1 north, range 8 west.

The west one-half of northeast one-fourth of section 23, township 1 north, range 8 west.

The east one-half of northeast one-fourth of section 23, township 1 north, range 8 west.

Lots 1, 2, and 3 of section 25, township 1 north, range 8 west.

The south one-half of southwest one-fourth of section 15, township 1 north, range 9 west.

The south one-half of southeast one-fourth of section 19, township 1 north, range 9 west.

The north one-half of southeast one-fourth and southwest one-fourth of section 21, township 1 north, range 9 west.

South one-half of southeast one-fourth of section 21, township 1 north, range 9 west.

The southwest one-fourth of southwest one-fourth of section 15, township 1 north, range 10 west.

The east one-half of northeast one-fourth and fractional southeast one-fourth of section 19 township 1 north, range 10 west.

Northeast one-fourth of southwest one-fourth and lot 3 of section 21, township 1 north, range 10 west.

The northeast one-fourth of northeast one-fourth and lot 4 of section 21, township 1 north, range 10 west.

The north one-half of northeast one-fourth of section 25, township 1 north, range 10 west.

The east one-half of southwest one-fourth; southeast one-fourth and lot 2 of section 7, township 1 north, range 11 west

Northwest one-fourth of northwest one-fourth of section 13, township 1 north, range 11 west.

The east one-half of southwest one-fourth of section 13, township 1 north, range 11 west.

All fractional section 15, township 1 north, range 15 west.

The south one-half of northeast one-fourth of section 17, township 1 north, range 11 west.

The southeast one-fourth of northwest one-fourth of section 17, township 1 north, range 11 west.

The north one-half of southeast one-fourth and lots 3 and 4 of section 17, township 1 north, range 11 west.

The northwest one-fourth of northeast one-fourth and lots 3 and 4 of section 23, township 1 north, range 11 west.

The southwest one-fourth of northwest one-fourth and lot 1 of section 23, township 1 north, range 11 west.

Lots 1 and 2 of northeast one-fourth of section 3, township 1 north, range 12 west.

Lot 3 of northwest one-fourth of section 3, township 1 north, range 12 west.

Lot 4 of northwest one-fourth of section 3, township 1 north, range 12 west.

Lot 5 of section 3 township 1 north, range 12 west.

The northeast one-fourth of southeast one-fourth of section 3, township 1 north, range 12 west.

Lots 1, 8 and 9 of section 5, township 1 north, range 12 west.

Lot 2 of section 5, township 1 north, range 12 west.

Lots 3, 4, 5, 6, and 7 of section 5, township 1 north, range 12 west.

Lots 1 and 2 of section 11, township 1 north, range 12 west.

Lots 3, 4 and 5 of section 11, township 1 north, range 12 west.

Lot 4 of section 13, township 1 north, range 12 west.

Lots 1 and 2 of section 13, township 1 north, range 12 west.

Lots 1, 2, and 3 of section 3, township 1 north, range 14 west.

Southeast one-fourth of northwest one-fourth; southwest one-fourth of northeast one-fourth; and northeast one-fourth of southwest one-fourth of section 3, township 1 north, range 14 west.

The southwest one-fourth of northwest one-fourth and lots 4 and 5 of section 3, township 1 north, range 14 west.

The southeast one-fourth of section 3, township 1 north, range 14 west.

The west one-half of southwest one-fourth and southeast one-fourth of southwest one-fourth of section 3, township 1 north, range 14 west.

Lots 1 and 2 of section 5, township 1 north, range 14 west.

The fractional north one-half of section 9, township 1 north, range 14 west.

The fractional south one-half of section 9, township 1 north, range 14 west.

The west one-half of northwest one-fourth and lots 1, 2, 3, and 4 of section 11, township 1 north, range 14 west.

Lot 1 of section 15, township 1 north, range 14 west.

Lots 1, 2, 3, and 4 of section 27, township 1 north, range 14 west.

The fractional southwest one-fourth of section 31, township 1 north, range 14 west.

The fractional southeast one-fourth of section 31, township 1 north, range 14 west.

The south one-half of southwest one-fourth and lots 1 and 2 of section 33, township 1 north, range 14 west.

The south one-half of southeast one-fourth and lots 3 and 4 of section 33, township 1 north, range 14 west.

The east one-half of section 35, township 1 north, range 14 west.

The northwest one-fourth of section 3, township 3 north, range 19 west.

The east one-half of northeast one-fourth of section 5, township 3 north, range 19 west.

The north one-half of southeast one-fourth; southwest one-fourth and north one-half of section 15, township 4 north, range 19 west.

The south one-half of southeast one-fourth of section 15, township 4 north, range 19 west.

The east one-half of northeast one-fourth and east one-half of southeast one-fourth of section 17, township 4 north, range 19 west.

The north one-half and southwest one-fourth of section 21, township 4 north, range 19 west.

The southeast one-fourth of section 21, township 4 north, range 19 west.

The northwest one-fourth of section 23, township 4 north, range 19 west.

The southwest one-fourth of section 23, township 4 north, range 19 west.

The northwest one-fourth of northwest one-fourth of section 25, township 4 north, range 19 west.

The northwest one-fourth of southeast one-fourth; east one-half of southwest one-fourth and southwest one-fourth of southwest one-fourth of section 25, township 4 north, range 19 west.

The east one-half of southeast one-fourth of section 25, township 4 north, range 19 west.

The northeast one-fourth of section 27, township 4 north, range 19 west.

The northeast one-fourth of northwest one-fourth and west one-half of northwest one-fourth of section 27, township 4 north, range 19 west.

The southeast one-fourth of northwest one-fourth of section 27, township 4 north, range 19 west.

The east one-half of northeast one-fourth and northeast one-fourth of southeast one-fourth, section 29, township 4 north, range 19 west.

The southeast one-fourth of northeast one-fourth of section 33, township 4 north, range 19 west.

Lots 2, 3, and 4 of section 33, township 4 north, range 19 west.

The east one-half of southeast one-fourth of section 33, township 4 north, range 19 west.

The north one-half of section 7, township 7 north, range 13 west.

All of fractional section 1, township 7 north, range 14 west.

All of fractional section 3, township 7 north, range 14 west.

All of fractional section 5, township 7 north, range 14 west.

The north one-half of section 7, township 7 north, range 14 west.

The north one-half of section 9, township 7 north, range 14 west.

The north one-half of section 11, township 7 north, range 14 west.

All of section 1, township 7 north, range 15 west.

The north one-half of section 3, township 7 north, range 15 west.

The northwest one-fourth and lot 2 of section 5, township 7 north, range 15 west.

All San Bernardino base and meridian, California.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, in and for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court January 7, 1898, in the cause entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this sixth day of June, A. D. 1898.

WM. M. VAN DYKE,

[Seal of Court.] Clerk.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad

Company et al. Certified copy order dismissing, without prejudice, as to certain lands. Filed June 6, 1898. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and the CENTRAL TRUST COMPANY OF NEW YORK, Defendants.

No. 600.

Enrollment.

The complainants filed their bill of complaint herein on the fourteenth day of May, 1894, against The Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, and the Central Trust Company of New York as defendants, which bill of complaint is hereto annexed.

A writ of subpoena to appear and answer the said bill of complaint was thereupon, on said fourteenth day of May, 1894, issued, at the request of complainants, separately for each of said defendants, The Southern Pacific Railroad Company, D. O. Mills, trustee, Gerrit L. Lansing, trustee, and the Central Trust Company of New

York, which said subpoenas were returnable on the second day of July, 1894; said subpoenas with the marshal's return thereof are hereto annexed.

On the twenty-first day of May, 1894, the Court made and entered an order herein giving complainants leave to file herein their amendment to their bill of complaint, a copy of which order is hereto annexed.

The complainants filed their amendment to their bill of complaint herein on the twenty-first day of May, 1894, which is hereto annexed.

On the twenty-eighth day of May, 1894, the Court made and entered an order herein that the defendants appear herein by August 6, 1894, and plead, answer or demur to the bill of complaint by the third day of September, 1894, a copy of which order is hereto annexed.

An alias writ of subpoena, directed to the defendants, The Southern Pacific Railroad Company, and Gerrit L. Lansing, trustee, and requiring said defendants, The Southern Pacific Railroad Company, and Gerrit L. Lansing, trustee, to appear and answer said bill of complaint, was thereafter, on the twenty-first day of July, 1894, issued, returnable on the third day of September, 1894, and is hereto annexed.

The defendants, The Southern Pacific Railroad Company and Gerrit L. Lansing, trustee, appeared specially herein for the purpose of objecting to the jurisdiction of the Court, on the first day of September, 1894, by Joseph D. Redding, Esq., their solicitor.

On the first day of September, 1894, the special appearance and plea in abatement of defendant, The South-

ern Pacific Railroad Company, was filed herein and is hereto annexed.

On the first day of September, 1894, the special appearance and plea in abatement of defendant, Gerrit L. Lansing, was filed herein and is hereto annexed.

On the eleventh day of October, 1894, the Court made and entered an order herein overruling the plea in abatement of defendant, The Southern Pacific Railroad Company, a copy of which order is hereto annexed.

On the eleventh day of October, 1894, the Court made and entered an order herein overruling the plea in abatement of defendant, Gerrit L. Lansing, a copy of which order is hereto annexed.

On the twenty-fourth day of December, 1894, the Court made and entered an order herein amending complainants' bill of complaint, a copy of which order is hereto annexed.

The bill of complaint was accordingly amended on the twenty-fourth day of December, 1894.

On the tenth day of January, 1895, the answer of the defendants to the bill of complaint was filed herein and is hereto annexed.

On the twenty-second day of January, 1895, defendants' exhibits "A," "B," and "C," attached to the answer were filed herein and are hereto annexed.

The replication of complainants to the answer of defendants was filed herein on the twenty-third day of January, 1895, and is hereto annexed.

The plea of Isabella Thornton to the bill of complaint was filed herein on the fifth day of March, 1896, and is hereto annexed.

The replication of complainants to the plea of Isabella Thornton was filed herein on the twelfth day of March, 1896, and is hereto annexed.

On the sixth day of April, 1896, the Court made and entered an order herein withdrawing the appearance and plea of defendant Isabella Thornton, a copy of which order is hereto annexed.

On the twenty-ninth day of May, 1896, the Court made and entered an order herein allowing complainants time to file amended or amended and supplementary bill of complaint, etc., a copy of which order is hereto annexed.

On the thirteenth day of June, 1896, the defendants filed herein their amendments to answer, which is hereto annexed.

On the thirteenth day of June, 1896, the defendants filed herein their notice and petition to file supplemental answer, which is hereto annexed.

On the twentieth day of July, 1896, the Court made and entered an order herein substituting Homer S. King, trustee, as party defendant in the place and stead of Gerrit L. Lansing, trustee, deceased, a copy of which order is hereto annexed.

On the twentieth day of July, 1896, the Court made and entered an order herein allowing defendants to amend their answer and that complainants' replication on file stand as the replication to the amended answer, a copy of which order is hereto annexed.

On the twenty-seventh day of July, 1896, the Court made and entered an order herein allowing defendants to file a supplemental answer herein, and that complain-

ants' replication now on file stand as the replication to the supplemental answer, etc., a copy of which order is hereto annexed.

The defendants filed their supplemental answer herein on the twenty-seventh day of July, 1896, which is hereto annexed.

On the thirty-first day of August, 1896, the Court made and entered an order herein setting cause for September 18, 1896, for hearing, also that defendants' answer filed January 10, 1895, be amended by the clerk, and said answer was accordingly so amended by the clerk; a copy of said order is hereto annexed.

The testimony taken in said cause on behalf of the respective parties was duly filed in the clerk's office of the said Circuit Court.

On the eighteenth day of September, 1896, being a day in the August term, A. D. 1896, of said Circuit Court, present the Honorable ERSKINE M. ROSS, Circuit Judge, the hearing of said cause before the Court was had upon the pleadings and proofs filed in said cause, and said cause was argued by counsel and submitted to the Court for its consideration and decision upon said pleadings, proofs and argument and upon briefs which were thereafter filed on behalf of the respective parties by counsel.

On the seventh day of December, 1897, The Pomona Land & Water Company filed herein a notice of motion for leave to intervene, which is hereto annexed.

On the seventh day of January, 1898, the Court made and entered herein an order withdrawing the application of the Pomona Land & Water Company for leave to file

a complaint in intervention herein, a copy of which order is hereto annexed.

On the seventh day of January, 1898, the Court made and entered herein an order that this cause be dismissed without prejudice as to certain lands, a copy of which order is hereto annexed.

On the twenty-fifth day of April, 1898, the Court made and entered an order herein that a decree be entered cancelling such of the patents as were issued to the Southern Pacific Railroad Company for lands included in the bill and not sold by it to a purchaser in good faith and for value, and quieting the title of the complainant as against the defendants as to all such lands and as to all unpatented odd numbered sections included in the bill situated within thirty miles on either side of the Atlantic and Pacific Railroad, as indicated by the map filed by it in 1872 in the general land office; and further decreeing that the complainant take nothing as to such of the said lands as have been patented and were sold by the defendant company to purchasers in good faith and for value.

On the sixth day of June, 1898, a final decree in accordance with said order was signed, filed, entered, and recorded herein, and is hereto annexed.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and the CENTRAL TRUST COMPANY OF NEW YORK, Defendants. } No. 600.

Decree.

This cause coming on for final decree this sixth day of June, A. D. 1898, in open Court, and the United States having appeared by Mr. Joseph H. Call, special assistant United States attorney, and the defendants having appeared by Mr. Wm. F. Herrin and Mr. Wm. Singer, Jr., their counsel and attorney, respectively; and the testimony having been taken and the cause duly argued and submitted; and by consent of parties and order of Court, Homer S. King, trustee, having been substituted for Gerrit L. Lansing, trustee, lately deceased, and the Court being now fully advised in the premises, it is by the Court now ordered, adjudged and decreed that the United States of America are the owners by title in fee simple, absolute, unencumbered, of all the lands hereinafter described and all patents heretofore issued by the United States to defendant Southern Pacific Railroad Company (a corpora-

tion), to or for any of said lands, are hereby decreed to be null and void and are hereby vacated, and the defendants Southern Pacific Railroad Company, D. O. Mills and Homer S. King, trustees of a certain mortgage or deed of trust dated April 1, 1875, executed by said Southern Pacific Railroad Company, and the Central Trust Company of New York, trustee, of a certain mortgage or deed of trust executed by said Southern Pacific Railroad Company dated August 25, 1888, be and they each hereby are forever enjoined and restrained from having or claiming any right, title, interest or lien in or to any of said lands and the title of the United States to said lands is hereby quieted; said lands being described as follows, towit:

All the sections and parts of sections of land in the State of California, surveyed and unsurveyed, designated by odd numbers, within thirty miles on each side of the line of route of the Atlantic & Pacific Railroad Company from the Colorado river to the Pacific ocean at or near San Buena Ventura, California, and coterminous with said line of route, as designated and established by the maps filed by said Atlantic & Pacific Railroad Company in the general land office and in the department of the interior in the year one thousand eight hundred and seventy-two, copies of which were introduced in evidence in this cause and are now on file herein, to which maps, designating said line of route, reference is hereby made; excepting, however, from the lands so described, and from the operation of this decree, the following specific tracts of land, which are not embraced by this suit, towit:

All the sections of land, surveyed and unsurveyed, designated by odd numbers, in townships three (3), and four (4) north; ranges five (5), six (6) and seven (7) west; township one (1) north, ranges sixteen (16), seventeen (17) and eighteen (18) west; township six (6) and south three-fourths of township seven (7) north, ranges eleven (11), twelve (12), thirteen (13), fourteen (14) fifteen (15), sixteen (16), seventeen (17), eighteen (18), and nineteen (19) west; also all of the sections of land designated by odd numbers, as shown by the public surveys, embraced within the townships from number two (2) north to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both numbers included.

The fractional northeast one-quarter of section 5, township 1 south, range 6 west.

The northwest one-quarter of section 9, township 1 south, range 6 west.

The north one-half of section 21, township 1 south, range 7 west.

The south one-half of section 21, township 1 south, range 7 west.

The east one-half of the northeast one-quarter and east one-half of southeast one-quarter of section 1, township 1 south, range 8 west.

The west one-half of northeast one-quarter; west one-half of southeast one-quarter and west one-half of section 1, township 1 south, range 8 west.

All of section 11, township 1 south, range 8 west.

All of fractional section 15, township 1 south, range 8 west.

Lots 1 and 2 of section 21, township 1 south, range 8 west.

The north one-half of northeast one-quarter of section 23, township 1 south, range 8 west.

Lots, 1, 2, 3 and 4 of section 25, township 1 south, range 8 west.

The south one-half of southeast one-quarter and south one-half of southwest one-quarter of section 27, township 1 south, range 8 west.

Lots 6 and 7 of section 33, township 1 south, range 9 west.

Lot 5 of section 33, township 1 south, range 9 west.

The south one-half of the southwest one-quarter and lots 1, 2, 3 and 4 of section 35, township 1 south, range 9 west.

Lot 1 of section 1, township 1 south, range 11 west.

Lot 1 of northwest one-quarter of section 7, township 1 south, range 11 west.

Lot 5 of southeast one-quarter of section 7, township 1 south, range 11 west.

Lot 6 of southeast one-quarter of section 7, township 1 south, range 11 west.

Lots 7 and 8 of northeast one-quarter of section 7, township 1 south, range 11 west.

The east one-half of northeast one-quarter and lot 6 of section 13, township 1 south, range 11 west.

The west one-half of northeast one-quarter; east one-half of northwest one-quarter; north one-half of southwest one-quarter and lots 1, 2, 3, 4, and 5 of section 13, township 1 south, range 11 west.

Lot 1 of section 3, township 1 south, range 12 west.

Lot 5 of section 3, township 1 south, range 12 west.

Lots 2 and 3 of section 5, township 1 south, range 12 west.

The northeast one-quarter of section 7, township 1 south, range 12 west.

Northeast one-quarter of southwest one-quarter of section 7, township 1 south, range 12 west.

Lots 3 and 4 of section 7, township 1 south, range 12 west.

Lots 1 and 2 of section 11, township 1 south, range 12 west.

The northwest one-quarter of northwest one-quarter of section 11, township 1 south, range 12 west.

The southeast one-quarter of northwest one-quarter and northeast one-quarter of southwest one-quarter of section 11, township 1 south, range 12 west.

The east one-half of northeast one-quarter of section 13, township 1 south, range 12 west.

The northeast one-quarter of section 15, township 1 south, range 12 west.

The southeast one-quarter of southeast one-quarter and northeast one-quarter of section 17, township 1 south, range 12 west.

The northeast one-quarter of southeast one-quarter of section 17, township 1 south, range 12 west.

The north one-half of southeast one-quarter of section 19, township 1 south, range 12 west.

The northwest one-quarter of northwest one-quarter of section 19, township 1 south, range 12 west.

The northwest one-quarter of southwest one-quarter and north one-half of section 29, township 1 south, range 12 west.

Southeast one-quarter of section 29, township 1 south, range 12 west.

The east one-half of northeast one-quarter; east one-half of southeast one-quarter and northwest one-quarter of section 31, township 1 south, range 12 west.

Lot 1 of section 11, township 1 south, range 13 west.

The northeast one-quarter of northeast one-quarter; southeast one-quarter of southeast one-quarter and lots 1 and 4 of section 15, township 1 south, range 13 west.

Lots 3 and 4 of section 25, township 1 south, range 13 west.

Lot 10 of section 3, township 1 south, range 14 west.

The south one-half of northeast one-quarter of section 3, township 1 south, range 14 west.

The east one-half of southeast one-quarter and lots 1 and 2 of section 3, township 1 south, range 14 west.

The southwest one-quarter of northwest one-quarter, and lots 3, 4, 5, and 7 of section 3, township 1 south, range 14 west.

The east one-half of southwest one-quarter; southwest one-quarter of southwest one-quarter, east one-half of northeast one-quarter and southeast one-quarter of section 5, township 1 south, range 14 west.

The northwest one-quarter of southwest one-quarter; west one-half of northeast one-quarter and northwest one-quarter of section 5, township 1 south, range 14 west.

The east one-half of northeast one-quarter of section 7, township 1 south, range 14 west.

The west one-half of northeast one-quarter of section 7, township 1 south, range 14 west.

The northwest one-quarter of section 7, township 1 south, range 14 west.

The north one-half of southeast one-quarter and lot 3 of section 7, township 1 south, range 14 west.

The southwest one-quarter of southeast one-quarter of section 7, township 1 south, range 14 west.

Northwest one-quarter of northwest one-quarter of section 11, township 1 south, range 14 west.

The east one-half of southeast one-quarter of section 11, township 1 south, range 14 west.

The west one-half of southeast one-quarter of section 11, township 1 south, range 14 west.

Lots 1, 2, 3, and 4 of section 23, township 1 south, range 14 west.

Northwest one-quarter of section 25, township 1 south, range 14 west.

Lot 1; southeast one-quarter of northeast one-quarter; north one-half of southeast one-quarter; southeast one-quarter of southeast one-quarter and east one-half of southwest one-quarter of section 1, township 1 south, range 15 west.

The east one-half of northwest one-quarter; southwest one-quarter of northeast one-quarter and lot 2 of section 1, township 1 south, range 15 west.

The southwest one-quarter of southeast one-quarter of section 1, township 1 south, range 15 west.

The southwest one-quarter of southwest one-quarter of section 1, township 1 south, range 15 west.

The northwest one-quarter of southwest one-quarter of section 1, township 1 south, range 15 west.

The west one-half of southeast one-quarter and west one-half of northeast one-quarter of section 11, township 1 south, range 15 west.

The northeast one-quarter of southeast one-quarter and southeast one-quarter of northeast one-quarter of section 11, township 1 south, range 15 west.

The northeast one-quarter of northeast one-quarter of section 11, township 1 south, range 15 west.

South one-half of northwest one-quarter and southwest one-quarter of section 11, township 1 south, range 15 west.

The southeast one-quarter of southeast one-quarter of section 11, township 1 south, range 15 west.

Lot 1 of section 3, township 2 south, range 11 west.

The northeast one-quarter of southeast one-quarter and south one-half of southeast one-quarter of section 9, township 2 south, range 11 west.

Lots 1 and 2 of section 3, township 2 south, range 13 west.

Fraction of lot 1 of section 5, township 2 south, range 13 west.

Fraction of lot 1 of section 5, township 2 south, range 13 west.

The south one-half of northeast one-quarter of section 11, township 2 south, range 14 west.

The southwest one-quarter of section 13, township 2 south, range 14 west.

All of fractional section 17, township 2 south, range 14 west.

The southwest one-quarter of northeast one-quarter; west one-half of southeast one-quarter and west one-half of section 11, township 1 north, range 4 west.

The fractional southwest one-quarter of section 18, township 1 north, range 4 west.

The fractional northwest one-quarter of section 27, township 1 north, range 5 west.

Lots 2 and 3 of northeast one-quarter of section 27, township 1 north, range 5 west.

The fractional southeast one-quarter of section 27, township 1 north, range 5 west.

The southwest one-quarter of section 27, township 1 north, range 5 west.

The west one-half of southwest one-quarter of section 9, township 1 north, range 6 west.

The west one-half of section 11, township 1 north, range 6 west.

The south one-half of southeast one-quarter of section 13, township 1 north, range 6 west.

The north one-half of southeast one-quarter of section 13, township 1 north, range 6 west.

The southwest one-quarter of section 13, township 1 north, range 6 west.

The northeast one-quarter of section 15, township 1 north, range 6 west.

The northwest one-quarter of section 15, township 1 north, range 6 west.

The east one-half of southeast one-quarter of section 15, township 1 north, range 6 west.

The west one-half of southeast one-quarter of section 15, township 1 north, range 6 west.

The east one-half of southwest one-quarter of section 15, township 1 north, range 6 west.

The west one-half of southwest one-quarter of section 15, township 1 north, range 6 west.

The east one-half of northeast one-quarter of section 17, township 1 north, range 6 west.

The east one-half of northeast one-quarter and west one-half of southeast one-quarter of section 23, township 1 north, range 6 west.

The southwest one-quarter of northeast one-quarter; southeast one-quarter of northwest one-quarter and southwest one-quarter of section 23, township 1 north, range 6 west.

The west one-half of northwest one-quarter of section 23, township 1 north, range 6 west.

The east one-half of southeast one-quarter of section 23, township 1 north, range 6 west.

The northwest one-quarter of northwest one-quarter; northeast one-quarter of northeast one-quarter; south one-half of northeast one-quarter; south one-half of northwest one-quarter and south one-half of section 25, township 1 north, range 6 west.

The northwest one-quarter of northeast one-quarter and northeast one-quarter of northwest one-quarter of section 25, township 1 north, range 6 west.

The northwest one-quarter of northeast one-quarter of section 27, township 1 north, range 6 west.

The east one-half of northeast one-quarter of section 27, township 1 north, range 6 west.

The southwest one-quarter of northeast one-quarter; northwest one-quarter of southeast one-quarter and northwest one-quarter of section 27, township 1 north, range 6 west.

The east one-half of southeast one-quarter of section 27, township 1 north, range 6 west.

The southwest one-quarter of southeast one-quarter of section 27, township 1 north, range 6 west.

The east one-half of southwest one-quarter of section 27, township 1 north, range 6 west.

The west one-half of southwest one-quarter of section 27, township 1 north, range 6 west.

The west one-half of section 29, township 1 north, range 6 west.

The east one-half of southeast one-quarter of section 29, township 1 north, range 6 west.

The west one-half of southeast one-quarter of section 29, township 1 north, range 6 west.

The east one-half of northeast one-quarter of section 31, township 1 north, range 6 west.

The north one-half of southwest one-quarter and west one-half of northeast one-quarter of section 31, township 1 north, range 6 west.

The fractional northwest one-quarter of section 31, township 1 north, range 6 west.

The west one-half of southeast one-quarter and south one-half of southwest one-quarter of section 31, township 1 north, range 6 west.

The southeast one-quarter of southeast one-quarter of section 31, township 1 north, range 6 west.

The northeast one-quarter of southeast one-quarter of section 31, township 1 north, range 6 west.

The northeast one-quarter of section 35, township 1 north, range 6 west.

The east one-half of section 35, township 1 north, range 6 west.

The northwest one-quarter of section 35, township 1 north, range 6 west.

The southwest one-quarter of section 35, township 1 north, range 6 west.

Lots 1 and 2 of section 21, township 1 north, range 7 west.

Lots 3 and 4 of section 21, township 1 north, range 7 west.

The fractional east one-half of section 27, township 1 north, range 7 west.

The northwest one-quarter of northeast one-quarter; east one-half of northeast one-quarter; southeast one-quarter of southeast one-quarter and lots 1, 2, 3, and 4 of section 35, township 1 north, range 7 west.

The northeast one-quarter of northwest one-quarter of section 13, township 1 north, range 8 west.

The southeast one-quarter of northwest one-quarter of section 13, township 1 north, range 8 west.

The southwest one-quarter of northwest one-quarter of section 13, township 1 north, range 8 west.

The northwest one-quarter of northwest one-quarter of section 13, township 1 north, range 8 west.

The west one-half of southwest one-quarter of section 13, township 1 north, range 8 west.

The southeast one-quarter of section 19, township 1 north, range 8 west.

The east one-half of southwest one-quarter and southeast one-quarter of section 21, township 1 north, range 8 west.

The southwest one-quarter of southwest one-quarter of section 21, township 1 north, range 8 west.

The northwest one-quarter of southwest one-quarter of section 21, township 1 north, range 8 west.

The west one-half of northeast one-quarter of section 23, township 1 north, range 8 west.

The east one-half of northeast one-quarter of section 23, township 1 north range 8 west.

Lots 1, 2 and 3 of section 25, township 1 north, range 8 west.

The south one-half of southwest one-quarter of section 15, township 1 north, range 9 west.

The south one-half of southeast one-quarter of section 19, township 1 north, range 9 west.

The north one-half of southeast one-quarter and southwest one-quarter of section 21, township 1 north, range 9 west.

South one-half of southeast one-quarter of section 21, township 1 north, range 9 west.

The southwest one-quarter of southwest one-quarter of section 15, township 1 north, range 10 west.

The east one-half of northeast one-quarter and fractional southeast one-quarter of section 19, township 1 north, range 10 west.

Northeast one-quarter of southwest one-quarter and lot 3 of section 21, township 1 north, range 10 west.

The northeast one-quarter of northeast one-quarter and lot 4 of section 21, township 1 north, range 10 west.

The north one-half of northeast one-quarter of section 25, township 1 north, range 10 west.

The east one-half of southwest one-quarter; southeast one-quarter and lot 2 of section 7, township 1 north, range 11 west.

Northwest one-quarter of northwest one-quarter of section 13, township 1 north, range 11 west.

The east one-half of southwest one-quarter of section 13, township 1 north, range 11 west.

All fractional section 15, township 1 north, range 15 west.

The south one-half of northeast one-quarter of section 17, township 1 north, range 11 west.

The southeast one-quarter of northwest one-quarter of section 17, township 1 north, range 11 west.

The north one-half of southeast one-quarter and lots 3 and 4 of section 17, township 1 north, range 11 west.

The northwest one-quarter of northeast one-quarter and lots 3 and 4 of section 23, township 1 north, range 11 west.

The southwest one-quarter of the northwest one-quarter and lot 1 of section 23, township 1 north, range 11 west.

Lots 1 and 2 of northeast one-quarter of section 3, township 1 north, range 12 west.

Lot 3 of northwest one-quarter of section 3, township 1 north, range 12 west.

Lot 4 of northwest one-quarter of section 3, township 1 north, range 12 west.

Lot 5 of section 3, township 1 north, range 12 west.

The northeast one-quarter of southeast one-quarter of section 3, township 1 north, range 12 west.

Lots 1, 8 and 9 of section 5, township 1 north, range 12 west.

Lot 2 of section 5, township 1 north, range 12 west.

Lots 3, 4, 5, 6, and 7 of section 5, township 1 north, range 12 west.

Lots 1 and 2 of section 11, township 1 north, range 12 west.

Lots 3, 4, and 5 of section 11, township 1 north, range 12 west.

Lot 4 of section 13, township 1 north, range 12 west.

Lots 1 and 2 of section 13, township 1 north, range 12 west.

Lots 1, 2, and 3 of section 3, township 1 north, range 14 west.

Southeast one-quarter of northwest one-quarter; southwest one-quarter of northeast one-quarter; and northeast one-quarter of southwest one-quarter of section 3, township 1 north, range 14 west.

The southwest one-quarter of northwest one-quarter and lots 4 and 5 of section 3, township 1 north, range 14 west.

The southeast one-quarter of section 3, township 1 north, range 14 west.

The west one-half of southwest one-quarter and southeast one-quarter of southwest one-quarter of section 3, township 1 north, range 14 west.

Lots 1 and 2 of section 5, township 1 north, range 14 west.

The fractional north one-half of section 9, township 1 north, range 14 west.

The fractional south one-half of section 9, township 1 north, range 14 west.

The west one-half of northwest one-quarter and lots 1, 2, 3, and 4 of section 11, township 1 north, range 14 west.

Lot 1 of section 15, township 1 north, range 14 west.

Lots 1, 2, 3, and 4 of section 27, township 1 north, range 14 west.

The fractional southwest one-quarter of section 31, township 1 north, range 14 west.

The fractional southeast one-quarter of section 31, township 1 north, range 14 west.

The south one-half of southwest one-quarter and lots 1 and 2 of section 33, township 1 north, range 14 west.

The south one-half of southeast one-quarter and lots 3 and 4 of section 33, township 1 north, range 14 west.

The east one-half of section 35, township 1 north, range 14 west.

The northwest one-quarter of section 3, township 3 north, range 19 west.

The east one-half of northeast one-quarter of section 5, township 3 north, range 19 west.

The north one-half of southeast one-quarter; southwest one- quarter and north one-half of section 15, township 4 north, range 19 west.

The south one-half of southeast one-quarter of section 15, township 4 north, range 19 west.

The east one-half of northeast one-quarter and east one-half of southeast one-quarter of section 17, township 4 north, range 19 west.

The north one-half and southwest one-quarter of section 21, township 4 north, range 19 west.

The southeast one-quarter of section 21, township 4 north, range 19 west.

The northwest one-quarter of section 23, township 4 north, range 19 west.

The southwest one-quarter of section 23, township 4 north, range 19 west.

The northwest one-quarter of northwest one-quarter of section 25, township 4 north, range 19 west.

The north one-quarter of southeast one-quarter; east one-half of southwest one-quarter, and southwest one-quarter of southwest one-quarter of section 25, township 4 north, range 19 west.

The east one-half of southeast one-quarter of section 25, township 4 north, range 19 west.

The northeast one-quarter of section 27, township 4 north, range 19 west.

The northeast one-quarter of northwest one-quarter and west one-half of northwest one-quarter of section 27, township 4 north, range 19 west.

The southeast one-quarter of northwest one-quarter of section 27, township 4 north, range 19 west.

The east one-half of northeast one-quarter and northeast one-quarter of southeast one-quarter of section 29, township 4 north, range 19 west.

The southeast one-quarter of northeast one-quarter of section 33, township 4 north, range 19 west.

Lots 2, 3, and 4 of section 33, township 4 north, range 19 west.

The east one-half of southeast one-quarter of section 33, township 4 north, range 19 west.

The north one-half of section 7, township 7 north, range 13 west.

All of fractional section 1, township 7 north, range 14 west.

All of fractional section 3, township 7 north, range 14 west.

All of fractional section 5, township 7 north, range 14 west.

The north one-half of section 7, township 7 north, range 14 west.

The north one-half of section 9, township 7 north, range 14 west.

The north one-half of section 11, township 7 north, range 14 west.

All of section 1, township 7 north, range 15 west.

The north one-half of section 3, township 7 north, range 15 west.

The northwest one-quarter and lot 2 of section 5, township 7 north, range 15 west.

San Bernardino base and meridian.

And excepting, also, the following described lands, lands, which it is adjudged were, prior to the commencement of this suit, sold by the defendant Southern Pacific Railroad Company to third persons, who purchased the same in good faith and for value, and as to which lands it is adjudged that the United States take nothing, which lands are described as follows, towit:

The fractional north one-half of section 7, township 7 north, range 18 west.

The north one-half of section 9, township 7 north, range 18 west.

The north one-half of northeast one-quarter and southwest one-quarter of northeast one-quarter of section 1, township 8 north, range 14 west.

The northwest one-quarter of section 1, township 8 north, range 14 west.

The northwest one-quarter of southeast one-quarter of section 1, township 8 north, range 14 west.

The southwest one-quarter of section 1, township 8 north, range 14 west.

The northeast one-quarter of section 3, township 8 north, range 14 west.

The northwest one-quarter of section 3, township 8 north, range 14 west.

The southeast one-quarter of section 3, township 8 north, range 14 west.

The southwest one-quarter of section 3, township 8 north, range 14 west.

The north one-half of northeast one-quarter of section 5, township 8 north, range 14 west.

The north one-half of northwest one-quarter of section 5, township 8 north, range 14 west.

The north one-half of southwest one-quarter; southeast one-quarter and north one-half of section 11, township 8 north, range 14 west.

The northeast one-quarter of section 1, township 8 north, range 16 west.

The northwest one-quarter of section 1, township 8 north, range 16 west.

The southeast one-quarter of section 1, township 8 north, range 16 west.

The southwest one-quarter of section 1, township 8 north, range 16 west.

The northeast one-quarter of section 3, township 8 north, range 16 west.

The northwest one-quarter of section 3, township 8 north, range 16 west.

The southeast one-quarter of section 3 township 8 north, range 16 west.

The southwest one-quarter of section 3, township 8 north, range 16 west.

The northeast one-quarter of section 5, township 8 north, range 16 west.

The northwest one-quarter of section 5, township 8 north, range 16 west.

The southeast one-quarter of section 5, township 8 north, range 16 west.

The southwest one-quarter of section 5, township 8 north, range 16 west.

All of section 11, township 8 north, range 16 west.

The northwest one-quarter of section 13, township 8 north, range 16 west.

The southeast one-quarter of section 13, township 8 north, range 16 west.

The fractional north one-half of section 19, township 9 north, range 14 west.

The southeast one-quarter of section 19, township 9 north, range 14 west.

The southwest one-quarter of section 19, township 9 north, range 14 west.

East one-half of section 21, township 9 north, range 14 west.

The west one-half of section 21, township 9 north, range 14 west.

All of section 23, township 9 north, range 14 west.

All of section 25, township 9 north, range 14 west.

The north one-half of section 27, township 9 north, range 14 west.

The north one-half of section 29 township 9 north, range 14 west.

The south one-half of section 29, township 9 north, range 14 west.

The east one-half of section 31, township 9 north, range 14 west.

The northwest one-quarter of section 31, township 9 north, range 14 west.

The southwest one-quarter of section 31, township 9 north, range 14 west.

The north one-half of section 33, township 9 north, range 14 west.

The south one-half of section 33, township 9 north, range 14 west.

All of section 35, township 9 north, range 14 west.

The northeast one-quarter of section 17, township 9 north, range 15 west.

The southeast one-quarter of section 17, township 9 north, range 15 west.

The northwest one-quarter of section 17, township 9 north, range 15 west.

The southwest one-quarter of section 17, township 9 north, range 15 west.

The northeast one-quarter of section 19, township 9 north, range 15 west.

The northwest one-quarter of section 19, township 9 north, range 15 west.

The southeast one-quarter of section 19, township 9 north, range 15 west.

The southwest one-quarter of section 19, township 9 north, range 15 west.

The southeast one-quarter of section 21, township 9 north, range 15 west.

The southwest one-quarter of section 21, township 9 north, range 15 west.

The north one-half of section 23, township 9 north, range 15 west.

The south one-half of section 23, township 9 north, range 15 west.

The northeast one-quarter of section 25, township 9 north, range 15 west.

The northwest one-quarter of section 25, township 9 north, range 15 west.

The southeast one-quarter of section 25, township 9 north, range 15 west.

The southwest one-quarter of section 25, township 9 north, range 15 west.

The north one-half of section 27, township 9 north, range 15 west.

The south one-half of southwest one-quarter and southeast one-quarter of section 27, township 9 north, range 15 west.

The northeast one-quarter of section 35, township 9 north, range 15 west.

The north one-half of northwest one-quarter of section 35, township 9 north, range 15 west.

The northeast one-quarter of section 13, township 9 north, range 16 west.

The northwest one-quarter of section 13, township 9 north, range 16 west.

The southeast one-quarter of section 13, township 9 north, range 16 west.

The southwest one-quarter of section 13, township 9 north, range 16 west.

The northeast one-quarter of section 19, township 9 north, range 16 west.

The northwest one-quarter of section 19, township 9 north, range 16 west.

The southeast one-quarter of section 19, township 9 north, range 16 west.

The southwest one-quarter of section 19, township 9 north, range 16 west.

The northeast one-quarter of section 21, township 9 north, range 16 west.

The northwest one-quarter of section 21, township 9 north, range 16 west.

The southeast one-quarter of section 21, township 9 north, range 16 west.

The southwest one-quarter of section 21, township 9 north, range 16 west.

The north one-half of section 23, township 9 north, range 16 west.

The northeast one-quarter of southeast one-quarter of section 23, township 9 north, range 16 west.

The northeast one-quarter of section 25, township 9 north, range 16 west.

The northwest one-quarter of section 25, township 9 north, range 16 west.

The southeast one-quarter of section 25, township 9 north, range 16 west.

The southwest one-quarter of section 25, township 9 north, range 16 west.

The northeast one-quarter of section 27, township 9 north, range 16 west.

The northwest one-quarter of section 27, township 9 north, range 16 west.

The southeast one-quarter of section 27, township 9 north, range 16 west.

The southwest one-quarter of section 27, township 9 north, range 16 west.

The northwest one-quarter of section 29, township 9 north, range 16 west.

The southwest one-quarter of section 29, township 9 north, range 16 west.

The northeast one-quarter of section 29, township 9 north, range 16 west.

The southeast one-quarter of section 29, township 9 north, range 16 west.

The north one-half of southwest one-quarter and southeast one-quarter of southwest one-quarter of section 13, township 8 north, range 16 west.

All of section 15, township 8 north, range 16 west.

The northeast one-quarter of section 23, township 8 north, range 16 west.

The northwest one-quarter of section 23, township 8 north, range 16 west.

The southeast one-quarter and lots 1, 2, 3 and 4 of section 9, township 8 north, range 17 west.

Lot 1 of section 27, township 8 north, range 17 west.

All of fractional section 29, township 8 north, range 17 west.

All of fractional section 31, township 8 north, range 17 west.

All of section 33, township 8 north, range 17 west.

All of fractional section 35, township 8 north, range 17 west.

The southwest one-quarter of southwest one-quarter and lots 1, 2 and 3 of section 13, township 8 north, range 18 west.

The northeast one-quarter of section 15, township 8 north, range 18 west.

The northwest one-quarter of section 15, township 8 north, range 18 west.

The southeast one-quarter of section 15, township 8 north, range 18 west.

The southwest one-quarter of section 15, township 8 north, range 18 west.

The southeast one-quarter of southeast one-quarter and west one-half of southeast one-quarter of section 17, township 8 north, range 18 west.

The east one-half of section 21, township 8 north, range 18 west.

The southwest one-quarter of section 21, township 8 north, range 18 west.

All of section 23, township 8 north, range 18 west.

The north one-half of southeast one-quarter; southwest one-quarter and north one-half of section 7, township 8 north, range 13 west.

The west one-half of northwest one-quarter of section 9, township 9 north, range 13 west.

The northwest one-quarter of southeast one-quarter; west one-half of northeast one-quarter and west one-half of section 17, township 9 north, range 13 west.

All of section 19, township 9 north, range 13 west.

The northeast one-quarter of northwest one-quarter; west one-half of northwest one-quarter and northwest one-quarter of southwest one-quarter of section 31, township 9 north, range 13 west.

The northeast one-quarter of section 31, township 9 north, range 16 west.

The southwest one-quarter of section 31, township 9 north, range 16 west.

The northeast one-quarter of section 33, township 9 north, range 16 west.

The northwest one-quarter of section 33, township 9 north, range 16 west.

The southeast one-quarter of section 33, township 9 north, range 16 west.

The southwest one-quarter of section 33, township 9 north, range 16 west.

The northeast one-quarter of section 35, township 9 north, range 16 west.

The northwest one-quarter of section 35, township 9 north, range 16 west.

The southeast one-quarter of section 35, township 9 north, range 16 west.

The southwest one-quarter of section 35, township 9 north, range 16 west.

Lots 1, 2, 3 and 4 of section 33, township 9 north, range 17 west, San Bernardino base and meridian..

And it is further ordered, adjudged and decreed, that this decree shall not affect any right which the United States may have to recover from the defendant Southern Pacific Railroad Company the proper government price for any of the aforesaid lands sold by the said company to third persons; nor shall it cancel or vacate any patent issued by the United States to the said Southern Pacific Railroad Company for lands sold by it to a bona fide purchaser.

It is further ordered, adjudged and decreed, that this decree shall not in any wise affect any right of way which the defendant Southern Pacific Railroad Company may have over, upon and across any of the lands described in this decree, to the extent of one hundred (100) feet in width on each side of its railroad, including all necessary ground for station buildings, work-shops, depots, machineshops, switches, sidetracks, turntables and water stations now properly appropriated and used by the said company for said purposes.

And it is further ordered, adjudged and decreed, that the United States have and recover their costs of this

suit taxed at one hundred and eighty and fifty one-hundredths (180.50) dollars.

ROSS,
Circuit Judge.

Decree entered and recorded June 6, 1898.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 600. United States vs. Southern Pacific Railroad Company *et al.* Decree. Filed June 6, 1898. Wm. M. Van Dyke, Clerk. Joseph H. Call, special United States attorney.

Whereupon said bill of complaint; separate subpoenas for the defendants, The Southern Pacific Railroad Company, D. O. Mills, trustee, Gerrit L. Lansing, trustee, and The Central Trust Company of New York; copy of order giving complainants leave to file their amendment to bill of complaint; complainants' amendment to bill of complaint; copy of order requiring defendants to appear; alias subpoena; special appearance and plea in abatement of The Southern Pacific Railroad Company; special appearance and plea in abatement of Gerrit L. Lansing; copy of order overruling plea in abatement of The Southern Pacific Railroad Company; copy of order overruling plea in abatement of Gerrit L. Lansing; copy of order amending complainants' bill of complaint; answer of defendants to bill of complaint; defendants' exhibits A, B and C, attached to answer; replication to answer; plea of Isabella Thornton to the bill of complaint; replication of complainants to the plea of Isabella Thornton; copy of or-

der withdrawing appearance and plea of Isabella Thornton; copy of order allowing complainants time to file amended or amended and supplementary bill of complaint; defendants' amendments to answer; defendants' notice and petition to file supplemental answer; copy of order substituting Homer S. King, trustee, as party defendant in place and stead of Gerrit L. Lansing, trustee, deceased; copy of order allowing defendants to amend their answer and that complainants' replication on file stand as the replication to the amended answer; copy of order allowing defendants to file supplemental answer, and that complainants' replication now on file stand as the replication to the supplemental answer; supplemental answer; copy of order setting cause for hearing and amending answer; notice of motion of the Pomona Land & Water Company for leace to intervene; copy of order withdrawing application of Pomona Land & Water Company for leave to file complaint in intervention; copy of order that this cause be dismissed without prejudice, as to certain lands, and said final decree are hereto annexed, said final decree being duly signed, filed, and enrolled, pursuant to the practice of said Circuit Court.

Attest, etc.,

WM. M. VAN DYKE,
Clerk.

[Seal of Court]

[Endorsed]: No. 600. In the Circuit Court of the United States, Ninth Judicial Circuit, for the Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Enrolled

papers. Filed June 6, 1898. Wm. M. Van Dyke, Clerk. Recorded Decree Register Book No. 2, page 244.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and the CENRTAL TRUST COMPANY OF NEW YORK, Defendants. } No. 600.

Opinion.

The main purpose of the bill in this suit is to obtain a decree quieting as against the Southern Pacific Railroad Company and its mortgagees the complainants' alleged title to all of the odd numbered sections of land in California within the indemnity as well as the primary limits of the grant made by Congress to the Atlantic & Pacific Railroad Company of date July 27, 1866 (14 Stats. 292), with the exception of certain specified subdivisions involved in previous litigation between the parties. The defendants assert title to and rights in the lands under and by virtue of the grants made by Congress to the Southern Pacific Railroad Company by the same act—

July 27, 1866—as well as by the joint resolution of Congress of June 28, 1870 (16 U. S. Stats. 382), and by the act of March 3, 1871 (16 Stats. 573).

These grants were the subjects of full consideration in cases heretofore brought in this Court and finally determined on appeal by the Supreme Court of the United States: United States v. Southern Pacific Railroad Company, 146 U. S. 570; United States v. Colton Marble & Lime Co., and United States v. Southern Pacific Railroad Company, 146 U. S. 615; and Southern Pacific Railroad Company v. United States, 168 U. S. 1. In my opinion, those decisions of the Supreme Court determined that the Southern Pacific Company by its grants acquired no interest or right in or to any of the odd-numbered sections of land embraced within the granted or indemnity limits of the Atlantic & Pacific Railroad Company, and mortgaged none of its codefendants.

I am of opinion, further, that by the act of Congress of March 2, 1896 (29 Stats. 42), supplementing that of March 3, 1887 (24 Stats. 556), such of the lands described in the bill as have been patented by the authorities of the United States to, and were sold by, the defendant railroad company for value and in good faith were thereby confirmed to such purchasers, whether such patents were issued prior to the institution of this suit, or subsequent thereto for lands for which a contract of sale had been entered into in good faith and for value between the railroad company and the purchaser. For such lands no suit can be maintained by the government to disturb the title of the purchaser, for the reason that Congress by the

legislation referred to has confirmed it. (United States v. Winona etc. R. R., 165 U. S. 463; Id. 483.)

The reasons for these conclusions will be found fully stated in the opinions in the cases cited, and it is deemed unnecessary to now do more than to refer to them. I do not understand that there is any dispute between the parties as to the lands for which patents have been issued, nor, as to the patents that were issued after the commencement of the suit, that it is disputed that they were for lands purchased of the railroad company in good faith and for value *before* the commencement of the suit.

A decree will be entered cancelling such of the patents as were issued to the Southern Pacific Railroad Company for lands included in the bill and not sold by it to a purchaser in good faith and for value, and quieting the title of the complainant as against the defendant as to all such lands and as to all unpatented odd-numbered sections included in the bill situated within thirty miles on either side of the Atlantic & Pacific Railroad as indicated by the map filed by it in 1872 in the general land office; and further decreeing that the complainant take nothing as to such of the said lands as have been patented and were sold by the defendant company to purchasers in good faith and for value.

ROSS,
Circuit Judge.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Opinion. Filed Apr. 25, 1898. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GARRIT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and the COLORADO RIVER IRRIGATION COMPANY,
Defendants.
No. 600.

Report of Special Examiner in Chancery.

Leo Longley, Special Examiner.

To the Honorable, the Judges of the Circuit Court of the United States in and for said District:

Pursuant to an order of reference made and entered in the above-entitled cause as of the eighth day of April, 1895, whereby it is ordered that the undersigned, as special examiner in chancery, shall take the evidence in the above-entitled cause and report the same to the Court, the said special examiner does now submit this his partial report, as follows:

That on the thirteenth day of April, 1895, the complainant appeared at the office of the clerk of the United States Circuit Court in the city of Los Angeles, California, by

its solicitor, Joseph H. Call, Esquire, and the defendants appeared by their solicitor, Joseph D. Redding, Esquire; and thereupon the complainant produced as witnesses upon its behalf William M. Van Dyke and H. J. Stevens, and introduced in evidence exhibits numbered Plaintiff's exhibits 1 to 55, inclusive. And thereupon the further taking of testimony herein was adjourned to be resumed upon further notice and consent of counsel.

That on the eighteenth day of October, 1895, the complainant appeared in the office of the clerk of the United States Circuit Court, in the city of Los Angeles, California, by its solicitor, Joseph H. Call, Esquire, and the defendants by their solicitor, Wiliam Singer, Jr., Esquire, and it was thereupon stipulated that defendants should have to and including October 19, 1895, in which to complete the taking of their testimony. That on said eighteenth day of October, 1895, the defendants produced William H. Robinson as a witness upon their behalf, and introduced in evidence exhibits numbered Defendants' Exhibits 256 to 310, inclusive; also, numbers 31 A and 31 B; also, numbers 311 to 324, inclusive. That by consent of counsel the defendants withdrew the offer of evidence made by defendants on July 2, 1895, and known as Defendants' Exhibit No. 6, and that many of the exhibits offered by defendants on this hearing were offered in lieu of exhibits theretofore introduced by defendants in evidence herein.

That by stipulation of counsel the signature of each and every witness to his respective deposition was waived.

And thereupon the further taking of testimony herein was adjourned to be resumed upon further notice and consent of counsel.

That the undersigned submits this partial report for the purpose of returning to the Court the exhibits introduced in evidence before him, in order that the clerk of said Court may perform the conditions of the stipulation appearing at page 80 of said record and the provisions of said stipulation be carried into effect.

And the said record, accompanying this report, contains all of the evidence and exhibits introduced in said cause by the respective parties, together with the stipulations entered into, before me as special examiner, to the date of this report; all of which, with the exhibits introduced, is now herewith returned to the Court.

November 15, 1895.

LEO LONGLEY,
Special examiner in chancery.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GARRIT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and the COLORADO RIVER IRRIGATION COMPANY,
Defendants.

No. 600.

Testimony.

Testimony taken on behalf of the plaintiff, before Leo Longley, special examiner in chancery, duly appointed by the Court, in the above-entitled cause, by consent of the parties, at the office of the clerk of the United States Circuit Court, in the city of Los Angeles, California, this 13th day of April, 1905. Present: Joseph H. Call, Esq., special assistant United States attorney, for the plaintiff; Joseph D. Redding, Esq., solicitor and counselor, for the defendants.

Mr. CALL.—I offer in evidence a certified copy from the department of the interior, of a letter dated December 7, 1893, from the commissioner of the general land office to the President of the Southern Pacific Railroad Company, together with a list of lands attached thereto, requesting and demanding a reconveyance ad relinquishment to the

United States of the lands therein described; and ask that the same be marked Plaintiff's Exhibit 1.

Mr. REDDING.—Objected to by defendants as incompetent, irelevant and immaterial. Furthermore, that a large portion of the lands mentioned in said exhibit are within the limits of the main line grant to the Southern Pacific Railroad Company, of July 27, 1866, and opposite to and within the granted and indemnity limits of sections of the road constructed by the defendant, the Southern Pacific Railroad Company pursuant to said last-named grant.

Mr. CALL.—I offer in evidence a certified copy, from the department of the interior, of a letter dated January 17, 1894, from the commissioner of the general land office to the President of the Southern Pacific Railroad Company, together with a list of the lands attached thereto, requesting and demanding a reconveyance and relinquishment to the United States of the lands therein described; and ask that the same be marked Plaintiff's Exhibit 2.

Mr. REDDING.—Same objection.

WILLIAM M. VAN DYKE, a witness produced on behalf of the plaintiff, being first duly cautioned and solemnly sworn to speak the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

By Mr. CALL.—Q. 1. State your name and official position.

A. William M. Van Dyke, Clerk of the United States Circuit Court, for the Southern District of California.

Q. 2. Have you in your official custody as such clerk the records and papers and documentary evidence in the cases of the United States against the Southern Pacific Railroad Company and others in the Southern District of California, Numbers 68, 177, 184 and 587?

A. Yes, sir. In 587 I have not, yet. In 587 there has been no report filed by the special examiner. Of course, I have got the files in that case.

Q. 3. Have you produced before the special examiner the documentary evidence requested by me?

A. Yes, sir.

Mr. Call.—I offer in evidence articles of consolidation dated August 12, 1873, between the Southern Pacific Railroad Company and other railroads, marked "Master's Exhibit 125 in the case of the United States against Southern Pacific Railroad Company and others," numbered 68 on the docket of this Court, and now marked Plaintiff's Exhibit 3.

Mr. REDDING.—Objected to by the defendants on the ground that the same is incompetent, irrelevant and immaterial, in that the Southern Pacific Railroad Company sued in this action is the Southern Pacific Railroad Company mentioned in the acts of Congress of July 27, 1866, and of March, 1871, and subsequent acts, and was recognized under the statement in said acts as the Southern Pacific Railroad Company and its successors and assigns.

Mr. CALL.—It is understood that the exhibits belonging to the records of other cases and now offered in this

case shall be returned to the custody of the clerk of this Court.

Mr. REDDING.—That is agreeable.

Mr. CALL.—I offer in evidence a certified copy of the articles of consolidation and incorporation of the Southern Pacific Railroad Company and other railroad companies, dated 1874, marked Plaintiff's Exhibit 12 in the case of the United States against Southern Pacific Railroad Company, numbered 587 on the docket of this Court, and now marked Plaintiff's Exhibit 4.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of articles of consolidation and incorporation of the Southern Pacific Railroad Company and other railroad companies, dated 1888, marked Plaintiff's Exhibit 13 in the said case number 587, and now marked Plaintiff's Exhibit 5.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence certified copy of articles of association and incorporation of the Southern Pacific Railroad Company, dated November 29, 1865, marked "Master's Exhibit 195 in the case of the United States against Southern Pacific Railroad Company et al.," numbered 68 on the docket of this Court, and now marked Plaintiff's Exhibit 6.

Mr. CALL.—I offer in evidence a certified copy of articles of association and so forth, between the Southern Pacific Railroad Company and other railroad companies, dated October 11, 1870, marked "Master's Exhibit 102 in said case No. 68," and now marked Plaintiff's Exhibit 7.

Mr. REDDING.—Same objection as made to Plaintiff's Exhibit 4.

Mr. CALL.—I offer in evidence a certified copy from the interior department, of a map showing the location of the Atlantic & Pacific Railroad from Springfield, Missouri, to the western boundary of said State, marked "Master's Exhibit 180 in said case No. 68," and now marked Plaintiff's Exhibit 8.

Mr. REDDING.—Objected to by defendants as being incompetent, irrelevant and immaterial, not being relevant to any of the issues in this case, and that it refers to a portion of the proposed route of an unconstructed railroad, outside of the State of California, and east of the Colorado river, and that it has nothing whatever to do with the line of route of the Atlantic & Pacific Railroad Company in California, as contemplated in the act of Congress of July 27, 1866, which reads to the effect that this route shall go in the most direct and eligible route from the Colorado river to the Pacific.

Mr. CALL.—I offer in evidence a certified copy of map of location of the Atlantic & Pacific Railroad from the Missouri State line to the mouth of Kingfisher creek, Indian Territory, marked "Master's Exhibit 181 in said case 68," and now marked Plaintiff's Exhibit 9.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence certified copy of map from interior department, of Atlantic & Pacific Railroad from the mouth of Kingfisher creek, Indian Territory, to western boundary of New Mexico, marked "Master's Exhibit 182 in said case 68," and now marked Plaintiff's Exhibit 10.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence certified copy of map of Atlantic & Pacific Railroad through the Territory of New Mexico, marked "Master's Exhibit 183 in said case 68," and now marked Plaintiff's Exhibit 11.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence certified copy of a map from the interior department, of the Atlantic & Pacific Railroad through the Territory of Arizona, marked "Master's Exhibit 184 in said case 68," and now marked Plaintiff's Exhibit 12.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy from the general land office, of the map of the Atlantic & Pacific Railroad from San Miguel Mission in California to a point on the western boundary line of Los Angeles county, together with a map of said railroad attached to said last-mentioned map from a point in township seven north, range seven east, San Bernardino base and meridian, California, to the Colorado river, said two maps being marked "Master's Exhibit 131 in said case 68," and now marked Plaintiff's 13.

Mr. REDDING.—The defendants object to the introduction of these two alleged maps, on the ground that the same are incompetent, irrelevant and immaterial, in that neither of these maps is the first map filed by the Atlantic & Pacific Railroad Company in the State of California, nor is it the map or maps, nor are they the map or maps, relied upon by the Atlantic & Pacific Railroad Company as designating or as locating their proposed line of route

in the State of California; furthermore, that the same are impositions and frauds, and fictitious maps, and do not show the result of any surveys made or intended to be made, or designated or located or fixed by the Atlantic & Pacific Railroad Company in California.

Mr. CALL.—I offer in evidence a certified copy of a map, from the general land office, of the Atlantic & Pacific Railroad from a point on the western boundary of Los Angeles county, California, to a point in township seven north, range seven east, San Bernardino base and meridian, marked "Master's Exhibit 127 in said case 68," and now marked Plaintiff's Exhibit 14.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence certified copy, from the general land office, of a map of the Atlantic & Pacific Railroad from San Francisco to San Miguel Mission, California, marked "Master's Exhibit 126 in said case 68," and now marked Plaintiff's Exhibit 15.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence certified copy of a letter from O. H. Browning, secretary of the interior, dated December 15, 1866, to the commissioner of the general land office, marked "Master's Exhibit 186 in said case 68," and now marked Plaintiff's Exhibit 16.

Mr. REDDING.—Objected to by defendants as incompetent, irrelevant and immaterial.

Mr. CALL.—I offer in evidence a certified copy of a letter from Columbus Delano, secretary of the interior to C. J. Hillyer, attorney for the Atlantic & Pacific Railroad Company, dated February 6, 1872, marked "Master's Ex-

hibit 187 in said case 68," and now marked Plaintiff's Exhibit 17.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of a letter from Cowan, acting secretary of the interior, dated December 1, 1871, to the commissioner of the general land office, marked "Master's Exhibit 188 in said case 68," and now marked Plaintiff's Exhibit 18.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of a letter from C. J. Hillyer, attorney for the Atlantic & Pacific Railroad Company, to Columbus Delano, secretary of the interior, dated February 3, 1871, marked Master's Exhibit 189 in said case 68," and now marked Plaintiff's Exhibit 19.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of a letter from C. Delano, secretary of the interior, to the commissioner of the general land office, dated February 6, 1872, marked "Master's Exhibit 190 in said case 68," and now marked Plaintiff's Exhibit 20.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of a letter from C. J. Hillyer, attorney for the Atlantic & Pacific Railroad Company, to the secretary of the interior, dated March 8, 1872, marked "Master's Exhibit 191 in said case 68," and now marked Plaintiff's Exhibit 21.

Mr. REDDING.—Same objection. Furthermore, objected to on the part of the defendants that it appears from this letter that the Atlantic & Pacific Railroad Com-

pany offers four different maps to the interior department on the same date: First, a map purporting to designate the line of the company from San Francisco to San Miguel Mission; second, a map purporting to designate the line of the company from the western boundary line of Los Angeles county to a point in seven north, seven east; third, a map purporting to show its line fom the eastern boundary of the territory of Arizona to the Colorado river; fourth, a map purporting to show the line of the company from the western boundary line of the State of Texas to the western boundary line of the *State* of New Mexico. That maps "3" and "4," transmitted by this letter, are differently constructed and show the evidences of a survey in the field, and plotting therefrom, and the designation of a line of route therefrom, while maps "1" and "2," transmitted by the said letter, are shown upon their face to be manufactured, fictitious, spurious, and fraudulent, and not showing the evidences of any survey whatever.

Mr. CALL.—I offer in evidence certified copy of a letter from the secretary of the interior, dated April 15, 1874, and attached thereto and as a part thereof, the opinion of the assistant attorney-general, dated March 16, 1874, together marked "Master's Exhibit 193 in said case 68," and now marked Plaintiff's Exhibit 22.

Mr. CALL.—I offer in evidence certified copy of a letter dated April 16, 1872, from the secretary of the interior to the commissioner of the general land office, and attached thereto and as a part of the same exhibit, a letter from the secretary of the interior to Francis B. Hayes, Esquire, president of the Atlantic & Pacific Railroad

Company, dated April 10, 1872; and attached thereto also and as a part of the same exhibit, a letter from the secretary of the interior to Francis B. Hayes, president of the Atlantic & Pacific Railroad Company, dated April 11, 1872, the said three letters being marked "Master's Exhibit 194 in said case 68," and now marked Plaintiff's Exhibit 23.

Mr. REDDING.—Objected to by the defendants as incompetent, irrelevant, and immaterial. And the letter of April 11, 1872, from B. R. Cowan, acting secretary, to Francis B. Hayes, president of the Atlantic & Pacific Railroad Company, is objected to as showing any approval of the alleged location of a line of the proposed railroad from a point on the western boundary of Los Angeles county to a point in seven north, seven east, San Bernardino base and meridian.

Mr. CALL.—I offer in evidence a certified copy of a letter from the secretary of the interior to the commissioner of the general land office, dated March 9, 1872, marked "Master's Exhibit 128 in said case 68," and now marked Plaintiff's Exhibit 24.

Mr. REDDING.—Objected to by the defendants as being incompetent, irrelevant, and immaterial, and not being the exemplified copy of the letter on file in that department, or the letter transmitted from the secretary to the commissioner, but as the exemplification shows, it is an exemplification of the letter as it appears of record in this department.

Mr. CALL.—I offer in evidence a certified copy of a letter from the commissioner of the general land office

to the register and receiver of the United States land office at Los Angeles, California, dated April 22, 1872, ordering a withdrawal of lands within the twenty and thirty mile limits of the Atlantic & Pacific Railroad between the western boundary line of Los Angeles county and a point in township seven north, range seven east, and so forth, marked "Master's Exhibit 129 in said case 68," and now marked Plaintiff's Exhibit 25.

Mr. REDDING.—Objected to as incompetent, irrelevant, and immaterial, in that it purports to order a withdrawal of lands in 1872 which had already been withdrawn in 1867 for the benefit of the Southern Pacific Railroad Company under the grant of July 27, 1866, and, as to a portion thereof, had already been withdrawn in 1871 for the benefit of the Southern Pacific Railroad Company under the act of March 3, 1871. Furthermore objected to as being incompetent for any purpose whatever as showing a withdrawal of any lands.

Mr. CALL.—I offer in evidence a certified copy of a letter from the secretary of the interior to the commissioner of the general land office, dated April 16, 1874, approving certain maps of definite location of the Atlantic & Pacific Railroad, marked "Master's Exhibit 130 in said case 68," and now marked Plaintiff's Exhibit 26.

Mr. REDDING.—Objected to by the defendants as being incompetent, irrelevant, and immaterial for any purpose whatsoever.

Mr. CALL.—I offer in evidence a certified copy of a letter from the commissioner of the general land office to the register and receiver of the United States land office

at Los Angeles, California, dated April 21, 1871, marked "Master's Exhibit 132 in said case 68," and now marked Plaintiff's Exhibit 27.

Mr. CALL.—I offer in evidence certified copy of a letter dated March 23, 1886, from the secretary of the interior to the commissioner of the general land office, marked "Master's Exhibit 175 in said case 68," and now marked Plaintiff's Exhibit 28.

Mr. REDDING.—Objected to by the defendants as incompetent, irrelevant, and immaterial.

Mr. CALL.—I offer in evidence, in connection with said letter just offered, and referred to therein, a copy of the letter, dated April 8, 1886, from the commissioner of the general land office to the register and receiver of the United States land office at Los Angeles, California, marked "Master's Exhibit 176 in said case 68," and now marked Plaintiff's Exhibit 29.

Mr. REDDING.—Same objection.

Mr. CALL.—No objection is made to the sufficiency of authentication of either of the last two exhibits?

Mr. REDDING.—No.

Mr. CALL.—I offer in evidence a certified copy of a diagram from the general land office, and being a record therein, marked "Master's Exhibit 163 in said case 68," and now marked Plaintiff's Exhibit 30.

Mr. REDDING.—Objected to by the defendants as incompetent, irrelevant, and immaterial.

Mr. CALL.—I offer in evidence a certified copy of the acceptance of the Atlantic & Pacific Railroad Company of an act of Congress, approved March 27, 1866, and the

terms and conditions thereof, dated November 23, 1866, marked "Examiner's Exhibit 30 in the case of the United States against Southern Pacific Railroad Company," numbered 184 on the docket of this Court, and now marked Plaintiff's Exhibit 31.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of the following pleadings and papers in the case of United States against Southern Pacific Railroad Company, consolidated number 67-68-69, of this Court, namely: amended bill of complaint, answer of the Southern Pacific Railroad Company and others thereto, replication of the plaintiff, mandate of the Supreme Court of the United States, and final decree of this Court, marked "Examiner's Exhibit 31 in said case 184," and now marked Plaintiff's Exhibit 32.

Mr. REDDING.—Objected to by the defendants as incompetent, immaterial, and irrelevant, in that the issues in said prior case are not the same as in this case, and in that the plaintiff in this case has not pleaded any former judgments or proceedings, or any former suits, and in that the plaintiff in this case has offered testimony upon the issues in this case which it assumes to be the same as the issues in the former cases.

Mr. CALL.—I offer in evidence the final record in the case of United States against Southern Pacific Railroad Company, and others, numbered 177 on the docket of this Court, including therein the pleadings, process, mandate of the Supreme Court, and final decree, marked "Examiner's Exhibit 40 in said case 184," and now marked Plaintiff's Exhibit 33.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence the opinion and decision of the United States Supreme Court in the case of the United States against Southern Pacific Railroad Company and others, numbered 863 on the docket of said Court, October term, 1892, and case numbered 68 on the docket of this Court, marked "Examiner's Exhibit 43 in said case 184," and now marked Plaintiff's Exhibit 34.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of the opinion and decision of the United States Supreme Court in the case of the United States against Southern Pacific Railroad Company and others, numbered 921 and 922, October term, 1892, of said Court, and being case numbered 177 on the docket of this Court, marked "Examiner's Exhibit 42 in said case 184," and now marked Plaintiff's Exhibit 35.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of the decision of the secretary of the interior in the case of the Southern Pacific Railroad Company against Milton McWharter, dated June 8, 1892, marked "Examiner's Exhibit 35 in said case 184," and now marked Plaintiff's Exhibit 36.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of the decision of the secretary of the interior, dated December 12, 1890, in the case of William C. Morgan against the Southern Pacific Railroad Company, marked "Examiner's Exhibit 36 in said case 184," and now marked Plaintiff's Exhibit 37.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of a letter and decision of the commissioner of the general land office, dated January 29, 1876, marked "Examiner's Exhibit 37 in said case 184," and now marked Plaintiff's Exhibit 38.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of the map showing the withdrawal limits for the Atlantic & Pacific Railroad grant from a point in township 4 north, range 16 west, San Bernardino base and meridian, to Santa Barbara, on the Pacific Coast, marked "Examiner's Exhibit 44 in said case 184," and now marked Plaintiff's Exhibit 39.

Mr. REDDING.—Objected to by the defendants as incompetent, irrelevant, and immaterial, and that the said withdrawal map was and is predicated upon a fraudulent and fictitious map tendered by the Atlantic & Pacific Railroad Company to the interior department.

Mr. CALL.—I offer in evidence a certified copy of a letter dated April 3, 1871, from the acting secretary of the interior to the commissioner of the general land office, and, attached to said letter, a map filed by the Southern Pacific Railroad Company in the year 1871, marked "Examiner's Exhibit 45 in said case 184," and now marked Plaintiff's Exhibit 40.

Mr. REDDING.—Is that map a certified copy?

Mr. CALL.—Yes, sir.

Mr. CALL.—I offer in evidence a certified copy of a letter dated April 22, 1872, from the commissioner of the

general land office to the register and receiver of the United States land office at Los Angeles, California, and, attached to said letter and offered together therewith, a map showing the withdrawal limits of lands for the Atlantic & Pacific Railroad from the western boundary of Los Angeles county to a point in township 7 north, range 7 east, San Bernardino base and meridian, showing the twenty and thirty mile limits thereof, marked "Examiner's Exhibit 48 in said case 184," and now marked Plaintiff's Exhibit 41.

Mr. REDDING.—Objected to by the defendants as incompetent, irrelevant, and immaterial, in that said map and said letter of the commissioner of the general land office are predicated upon a fraudulent, spurious, and fictitious map of attempted location by the Atlantic & Pacific Railroad Company tendered by said company on March 8, 1872, to the secretary of the interior, which in no wise conformed to the route selected and designated by said Atlantic & Pacific Railroad Company upon which it intended to locate its line in the State of California. Furthermore, that said lands embraced in said letter and said map had been withdrawn for the benefit of the Southern Pacific Railroad Company in 1871 under the act of March 3, 1871, and, as to a portion thereof, had been withdrawn in 1867 under the act making a grant of lands to the Southern Pacific Railroad Company of July 27, 1866.

Mr. CALL.—I offer in evidence a certified copy of a letter dated November 23, 1874, from the commissioner of the general land office to the register and receiver of the

United States land office at San Francisco, California, ordering a withdrawal of lands for the Atlantic & Pacific Railroad in the San Francisco land district, marked "Examiner's Exhibit 54 in said case 184," and now marked Plaintiff's Exhibit 42.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of a letter dated November 23, 1874, from the commissioner of the general land office to the register and receiver of the United States land office at Visalia, California, ordering a withdrawal of lands for the Atlantic & Pacific Railroad of lands within the Visalia land district, marked "Examiner's Exhibit 53 in said case 184," and now marked Plaintiff's Exhibit 43.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of a letter dated April 22, 1872, from the commissioner of the general land office to the register and receiver at San Francisco, California, ordering a withdrawal of lands for the Atlantic & Pacific Railroad Company in said San Francisco land district, marked "Examiner's Exhibit 55 in said case 184," and now marked Plaintiff's Exhibit 44.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of a letter dated May 7, 1872, from the register of the United States land office at Los Angeles, California, to the commissioner of the general land office, acknowledging receipt of map and order of withdrawal, marked "Examiner's Exhibit 56 in said case 184," and now marked Plaintiff's Exhibit 45.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of a decision of Carl Schurtz, secretary of the interior, dated October 18, 1877, confirming the definite location and withdrawal for the Atlantic & Pacific Railroad, marked "Examiner's Exhibit 57 in said case 184," and now marked Plaintiff's Exhibit 46.

Mr. REDDING.—Same objection. And the defendants furthermore object to the counsel for the government stating in his offer his legal conclusion as to what the contents of said letter may be, the same being misleading and confusing to the Court.

Mr. CALL.—I offer in evidence a certified copy, from the office of the secretary of the interior, of a letter dated March 9, 1872, from Delano to Drummond, marked "Examiner's Exhibit 52 in said case 184," and now marked Plaintiff's Exhibit 47.

Mr. REDDING.—Objected to by the defendants as being incompetent, irrelevant, and immaterial. Defendants furthermore object that the same is not an exemplified copy of the original letter as the same appears on file in the office of the commissioner of the general land office, but it purports to be a copy of the original letter as it appears of record, that is to say, as the same has been recorded.

Mr. CALL.—I offer in evidence a certified copy, from the office of the secretary of the interior, of the said letter of March 9, 1872, as the same appears of record in the letter-press copy book in said office, marked "Examiner's Exhibit 51 in said case 184," and now marked Plaintiff's Exhibit 48.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of said letter of March 9, 1872, from Delano to the commissioner of the general land office, being a tracing from the said letter as it now appears in said office, marked "Examiner's Exhibit 50 in said case 184," and now marked Plaintiff's Exhibit 49.

Mr. REDDING.—Objected to by the defendants as incompetent, irrelevant, and immaterial.

Mr. CALL.—I now offer in evidence a certified copy of letter and decision, dated November 11, 1869, from the secretary of the interior to the commissioner of the general land office, marked "Examiner's Exhibit 59 in said case 184," and now marked Plaintiff's Exhibit 50.

Mr. REDDING.—Is that in reference to the map filed by the Atlantic & Pacific Railroad Company in 1869?

Mr. CALL.—Among other things the letter rejects that map.

Mr. REDDING.—It refers to that map, does it?

Mr. CALL.—Yes.

Mr. REDDING.—Before that exhibit is introduced, I call for the map of 1869, and I object to the letter as being incompetent, irrelevant, and immaterial without it.

Mr. CALL.—I offer in evidence a certified copy of a letter of November 23, 1874, from the commissioner of the general land office to the register and receiver of the United States land office at Los Angeles, California, and, attached to said letter and now offered in connection therewith, a certified copy of a map showing the withdrawal limits for the Atlantic & Pacific Railroad from San Miguel Mission, in California, by way of San Buenaventura to the western boundary line of Los Angeles

county, California, marked "Examiner's Exhibit 49 in said case 184," and now marked Plaintiff's Exhibit 51.

Mr. REDDING.—Same objection as heretofore offered to the letters and maps offered purporting to show the withdrawal limits of the Atlantic & Pacific Railroad Company under the maps tendered by attorney Hillyer to the interior department under date of March 8, 1872.

Mr. CALL.—I offer in evidence a certified copy of a decision of the secretary of the interior, dated August 2, 1878, in the case of Samuel Tome and others against the Southern Pacific Railroad Company, and, attached thereto, an opinion of the attorney-general, the same being now marked Plaintiff's Exhibit 52.

Mr. REDDING.—Objected to by the defendants as incompetent, irrelevant, and immaterial.

Mr. CALL.—I offer in evidence a certified copy of letter dated October 5, 1893, in the case of Mattie Moore against Kellogg, marked Plaintiff's Exhibit 53.

Mr. REDDING.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of the letter and decision of the secretary of the interior to the commissioner of the general land office, dated November 2, 1869, in reference tothe revocation of the order of withdrawal for the Southern Pacific Railroad main line, marked Plaintiff's Exhibit 54.

Mr. REDDING.—Same objection.

H. J. STEPHENS, a witness produced on behalf of the plaintiff, being first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

By Mr. CALL.—Q. 1. What is your name and official position?

A. H. J. Stephens. Clerk in the United States land office, Los Angeles, California.

Q. 2. Have you in your custody as such clerk the map of the withdrawal for the Atlantic & Pacific Railroad from the Colorado river to a point in township 7 north, range 7 east, San Bernardino base and meridian?

A. Yes, sir; I have the map of withdrawal.

Q. 3. You will now produce the same before the examiner.

A. (Map produced.)

Q. 4. Is that the original map on record in your office?

A. Yes, sir.

Q. 5. What filing marks are there upon the map?

A. Marked "Filed, Dec. 10, 1874." There are some other marks here.

Q. 6. And what other indorsement?

A. Indorsement in red, "Withdrawal to date from August"—

Q. 7. "15," ain't it?

A. It is "15," yes; but the "5" has been partly torn off. "1872."

Mr. CALL.—I offer this map in evidence, to be marked Plaintiff's Exhibit 55.

Mr. REDDING.—Objected to by the defendants as incompetent, irrelevant, and immaterial.

Cross-Examination.

By. Mr. REDDING.—Q. 8. Mr. Stephens, do you know who wrote those marks on the bottom of this exhibit?

A. No, sir.

Q. 9. Do you know anything about their authenticity?

A. No, sir.

Q. 10. Is there any certificate attached to them of any register and receiver, or any official, as having made these marks?

A. No, sir; nor any signature. I know the map, however. I have known the map for nearly ten years.

Q. 11. Well, I am not asking you about the map; I am asking you about the writing on the map, at the bottom of it. Do you know anything about that?

A. No, I don't know who did that.

Mr. CALL.—Will you waive Mr. Stephens' signature to his deposition?

Mr. REDDING.—Yes, sir.

Mr. CALL.—And you will also waive the signature of the clerk, Mr. Van Dyke?

Mr. REDDING.—Yes, sir.

Mr. CALL.—It is stipulated that a copy of the said map now tendered by Mr. Call, having been compared by the solicitor for the defendants, may be substituted in lieu of the one produced by the clerk of the land office, with the eliminations and erasures therefrom which are made in blue pencil, and provided that the testimony of the clerk from the land office with reference to the exhibit tendered by him and the marks thereon shall apply to this copy with full force and effect.

Mr. REDDING.—It is so stipulated.

The further taking of testimony herein is now adjourned, to be resumed upon further notice.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GARRIT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and the COLORADO RIVER IRRIGATION COMPANY, Defendants. } No. 600

TESTIMONY.—(Continued.)

Testimony taken on behalf of the defendants, before Leo Longley, special examiner in chancery, duly appointed by the Court, in the above-entitled cause, by consent of the parties, at the office of the Clerk of the United States Circuit Court, in the city of Los Angeles, California, this eighteenth day of October, 1895. Present: Wm. Singer, Jr., Esq., for the defendants; Joseph H. Call, Esq., special assistant United States attorney, for the plaintiff.

Mr. CALL.—It is stipulated that defendants shall have until October 19, 1895, inclusive, in which to complete the taking of their testimony. Is that correct?

Mr. SINGER.—That is agreeable.

Mr. SINGER.—If agreeable to you, Mr. Call, I will withdraw the offers of evidence made by us on July 2, 1895, known as Defendants' Exhibit No. 6.

Mr. CALL.—No objection. By stipulation, the defendants withdraw their Exhibit No. 6 heretofore offered.

Mr. SINGER.—I offer in evidence a certified copy of three several letters each from Joseph S. Wilson, commissioner of the general land office, each dated March 22, 1867, one addressed to the register and receiver at San Francisco, another to the register and receiver at Visalia, and the third to the register and receiver at Stockton, California, each of which letters transmits a map showing the twenty miles and thirty miles limits of the land grant made by the act of Congress July 27, 1866, to the Southern Pacific Railroad Company, and orders withdrawal of all the odd numbered section within such limits; together with a certified copy of the map, attached, which was transmitted with those letters. These copies are attached together, with one certificate, dated August 8, 1895, signed and sealed by E. F. Best, acting commissioner; and I offer them in evidence together, to be marked Defendants' Exhibit No. 256.

Mr. CALL.—The plaintiff objects to the introduction of said map and each of said letters as incompetent, immaterial, and irrelevant.

Mr. SINGER.—I offer in evidence together, as one exhibit, a certified copy of the following letters, attached together, with one certificate, dated August 3, 1895, and signed and sealed by S. W. Lamoreux, commissioner of the general land office: From O. H. Browning, secretary

of the interior, dated July 14, 1868, and addressed to Hon. Joseph S. Wilson, commissioner of the general land office, revoking the orders of withdrawal made by Secretary Browning's letter of March 19, 1867; from O. H. Browning, secretary of the interior, dated August 20, 1868, addressed to Hon. Joseph S. Wilson, commissioner of the general land office, suspending the order of revocation made by Secretary Browning's letter of July 14, 1868; from J. D. Cox, secretary of the interior, dated November 2, 1869, addressed to Hon. Joseph S. Wilson, commissioner of the general land office, revoking the order made by Secretary Browning's letter of August 20, 1868; from J. D. Cox, secretary of the interior, dated December 15, 1869, and addressed to Hon. Joseph S. Wilson, commissioner of the general land office, suspending the order made by Secretary Cox's letter of November 2, 1869; from J. D. Cox, secretary of the interior, dated July 26, 1870, and addressed to Hon. Joseph S. Wilson, commissioner of the general land office, directing that the withdrawals ordered by Secretary Browning's letter of March 19, 1867, be respected; from Joseph S. Wilson, commissioner of the general land office, dated July 29, 1870, and addressed to the register and receiver at Visalia, California, directing that the reservations made by the commissioner's letter of March 22, 1867, be respected; from Joseph S. Wilson, commissioner of the general land office, dated July 29, 1870, and addressed to the register and receiver at Stockton, California, directing that the reservation made by the commissioner's letter of March 22, 1867, be respected. The seven copies mentioned are introduced with a

certificate attaching them together, and I ask that they be marked Defendant's Exhibit No. 257.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from J. D. Cox, secretary of the interior, dated July 22, 1870, and addressed to Messrs. William Sherman, Thomas B. Shannon, and Calvin Brown, notifying them of their appointment by the President of the United States as commissioners to examine and report upon the first completed section of the Southern Pacific Railroad Company's road as constructed from San Jose to Gilroy under the provisions of the act of July 27, 1866; also a certified copy, attached, of a letter from C. Delano, secretary of the interior, dated November 25, 1870, and addressed to William Sherman, Calvin Brown and Thomas B. Shannon, as commissioners of the Southern Pacific Railroad, instructing them to make another examination and report upon the first constructed section of said railroad. These copies are attached together, with one certificate, dated July 30, 1895, signed and sealed by John M. Reynolds, acting secretary of the interior, and I ask that they be marked Defendants' Exhibit No. 258.

Mr. CALL.—Plaintiff objects to the introduction of said exhibit and to each of said documents as incompetent, immaterial, and irrelevant.

Mr. SINGER.—In lieu of offer heretofore made as defendants' exhibits numbers 7 and 8, I offer in evidence a certified copy of the report of William Sherman, Calvin Brown, and Thomas B. Shannon, as commissioners, of their examination and approval of the first constructed

section of 30.26 miles of the railroad and telegraph line of the Southern Pacific Railroad Company, extending from San Jose to Gilroy, which report is addressed to Hon. Jacob D. Cox, secretary of the interior, and dated October 29, 1870. Also, a certified copy, attached, of an amended report made by William Sherman and Calvin Brown, of their further examination and approval of the said first constructed section, which amended report is addressed to Hon. C. Delano, secretary of the interior, and dated December 29, 1870. Also, a certified copy attached, of a letter from C. Delano, secretary of the interior, dated January 18, 1871, and addressed to the President of the United States, submitting the said report and amended report of the commissioners, and recommending the acceptance of the same. Also, all the indorsements which appear, including the approval by U. S. Grant, President, dated January 19, 1871. These copies are attached together, with one certificate, dated July 26, 1895, signed and sealed by John M. Reynolds, acting secretary of the interior, and I ask that they be marked Defendants' Exhibit No. 259.

Mr. CALL.—Plaintiff objects to the introduction of said exhibit, and to each of the papers and documents specified, upon the ground that said exhibit and each of said documents is incompetent, immaterial, and irrelevant to the issues.

Mr. SINGER.—In lieu of the defendants' offer of evidence as exhibit No. 243, I offer in evidence a certified copy of the map of the first constructed section of the railroad, main line, extending from San Jose to Gilroy,

which map is attested by William Sherman, Calvin Brown and Thomas B. Shannon, as railroad commissioners, and endorsed as filed in the general land office on August 7, 1871. I ask that it be marked Defendants' Exhibit No. 260.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from B. R. Cowen, acting secretary of the interior, dated August 3, 1871, and addressed to Messrs. George Oulton, Robert Lee and George P. Wilson, notifying them of their appointment by the President of the United States as commissioners to examine and report upon the second completed section of the Southern Pacific Railroad Company's road as constructed from Gilroy to the end of the 50.26 miles thereof under the provisions of the act of July 27, 1866, and ask that it be marked Defendants' Exhibit No. 261.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made on behalf of the defendants as Exhibit No. 9, I offer in evidence a certified copy of the report of George Oulton, George P. Wilson and Robert Lee, as commissioners, of their examination and approval of the second completed section of twenty miles of the railroad and telegraph line of the Southern Pacific Railroad Company, commencing at Gilroy and terminating at the end of the 50.26 miles from the point of commencement, at San Jose, which report is addressed to Hon. C. Delano, secretary of the interior, dated September 12, 1871. Also, a certified copy attached, of a letter from C. Delano, secretary of the interior, dated October 13, 1817, and addressed to the Presi-

dent of the United States, submitting the said report of the commissioners and recommending the acceptance of the same. Also, all the endorsements which appear, including the approval of U. S. Grant, President, dated October 23, 1871. These copies are attached together, with one certificate, dated July 26, 1895, signed and sealed by John M. Reynolds, acting secretary of the interior, and I ask that they be marked Defendants' Exhibit No. 262.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of defendants' offer heretofore made as Exhibit No. 244, I offer in evidence a certified copy of a map and profile of section number two of the Southern Pacific Railroad, main line, commencing at Gilroy at the end of section number one and ending at the 50.26 miles of road, which map is attested by George Oulton, Robert Lee, and George P. Wilson, as railroad commissioners, and endorsed as filed in the general land office October 27, 1871. I ask that it be marked Defendants' Exhibit No. 263.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of the appointment of L. M. Foulke, Calvin Brown and Eugene L. Sullivan, as commissioners, to examine and report upon the Southern Pacific main line road, signed by the President, U. S. Grant, and dated July 23, 1872, and ask that it be marked Defendants' Exhibit No. 264.

Mr. CALL.—Same objection. Mr. Singer, is it understood that the words "same objection" shall be understood as including the former objection entered at length?

Mr. SINGER.—It may be so understood throughout the entire examinaion.

Mr. SINGER.—I offer in evidence a certified copy of a letter from W. H. Smith, acting secretary of the interior, dated July 23, 1872, and addressed to L. M. Foulke, Eugene Sullivan, and Calvin Brown, notifying them of their appointment by the President of the United States as commissioners to examine and report upon the third completed section of the Southern Railroad Company's main line road, commencing at a point in section 19, township 18 south, range 24 east, and running in a southeasterly direction for twenty miles to a point in section 30, township 21 south, range 25 east, Mount Diablo meridian, and ask that it be marked Defendants' Exhibit No. 265.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of defendants' offer heretofore made as Exhibit No. 10. I offer in evidence a certified copy of the report of Lewis M. Foulke, Calvin Brown and Eugene Sullivan, as commissioners, of their examination and approval of the third completed section of twenty miles of the Southern Pacific Railroad Company's main line road, extending from a point in section 19, township 18 south, range 24 east, in a southerly direction to the termination of the twentieth mile therefrom at a point in section 30, township 21 south, range 25 east, which report is addressed to Hon. C. Delano, secretary of the interior, and dated September 14, 1872; also a certified copy, attached, of a letter from B. R. Cowan, acting secretary of the interior, dated September 28, 1872, and

CLERK'S COPY. 3767

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 1552 18

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, TRUSTEES, AND THE CENTRAL TRUST COMPANY, OF NEW YORK,

Appellants,

VS.

THE UNITED STATES OF AMERICA,

Appellee.

VOLUME II

(PAGES 401 to 850 Inclusive)

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 494

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, Trustees, AND THE CENTRAL TRUST COMPANY, OF NEW YORK,

Appellants,

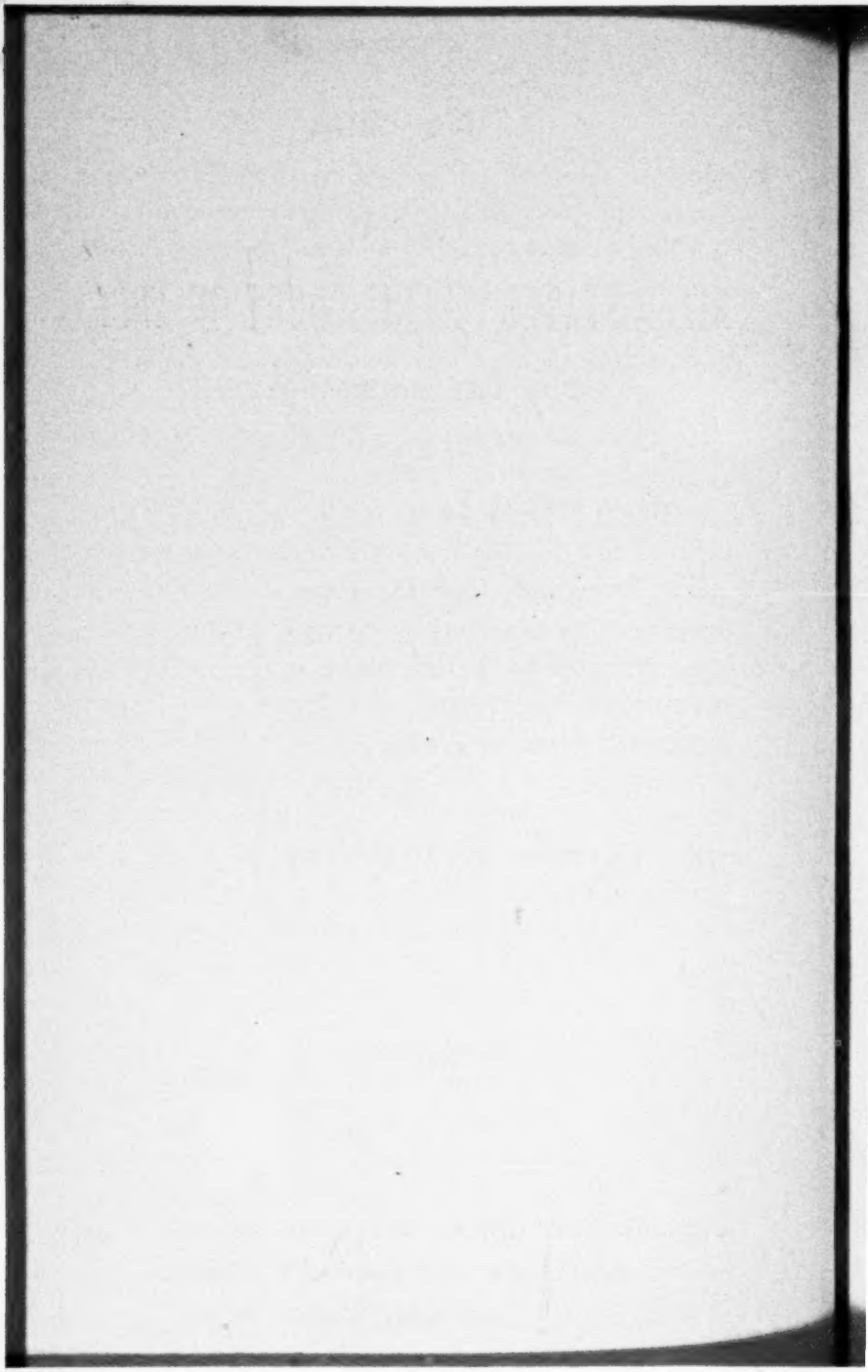
vs.

THE UNITED STATES OF AMERICA.

VOLUME 2

(PAGES 401—850 Inclusive.)

Appeal from the Circuit Court of the United States for the Southern District of California.



addressed to the President of the United States, submitting the said report of the commissioners and recommending the acceptance of the same; also, the endorsements which appear, including the approval by U. S. Grant, President, dated October 1, 1872. These copies are attached together, with one certificate, dated July 26, 1895, signed and sealed by John M. Reynolds, acting secretary of the interior, and I ask that they be marked Defendants' Exhibit No. 266.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the defendants' offer heretofore made as Exhibit No. 245, I offer in evidence a certified copy of the map and profile of section number three of the Southern Pacific Railroad, main line, commencing at a point in section 19, township 18 south, range 24 east, and running in a southeasterly direction to the termination of the twentieth mile therefrom to a point in section 30, township 21 south, range 25 east, Mount Diable meridian, which map is attested by Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, as railroad commissioners, and endorsed as filed in the general land office, October 2, 1872, and ask that it be marked Defendants' Exhibit No. 267.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from C. Delano, secretary of the interior, dated July 7, 1873, and addressed to L. M. Foulke, Eugene L. Sullivan and Calvin Brown, notifying them of their appointment by the President of the United States as commissioners to examine and report upon the fourth section

of twenty miles of the Southern Pacific Railroad Company's main line road as completed from a point in section 30, township 21 south, range 25 east, and running in a southeasterly direction to the termination of the twentieth mile thereof to a point in section 2, township 25 south, range 25 east, Mount Diablo meridian, and ask that the same be marked Defendants' Exhibit No. 268.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer made as Defendants' Exhibit No. 11, I offer in evidence a certified copy of the report of Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, as commissioners, of their examination and approval of the fourth section of twenty miles of the Southern Pacific Railroad Company's main line road, commencing at a point in section 30, township 21 south, range 25 east, and running thence in a southeasterly direction to the end of the twentieth mile therefrom at a point in section 2, township 25 south, range 25 east, Mount Diablo meridian, which report is addressed to Hon C. Delano, secretary of the interior, and dated July 23, 1873, also a certified copy, attached, of a letter from B. R. Cowen, acting secretary of the interior, dated August 5, 1873, and addressed to the President of the United States, submitting the said report of the commissioners and recommending the acceptance of the same; also, all the endorsements which appear, including the approval by U. S. Grant, President, dated August 6, 1873. These copies are attached together, with one certificate, dated July 26, 1895, signed and sealed by John M. Reynolds, acting secretary of the interior, and I ask that they be marked Defendants' Exhibit No. 269.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of defendants' offer heretofore made as Exhibit No. 246, I offer in evidence a certified copy of a map and profile of section number four of the Southern Pacific Railroad, main line, commencing at a point in section 30, township 21 south, range 25 east, and running in a southeasterly direction and ending at the termination of the twentieth mile therefrom at a point in section 2, township 25 south, range 25 east, Mount Diablo meridian, which map is attested by Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, as railroad commissioners, and certified as filed in the general land office, and ask that it be marked as Defendants' Exhibit No 270.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from C. Delano, secretary of the interior, dated July 2, 1874, and addressed to L. M. Foulke, Eugene L. Sullivan, and Calvin Brown, notifying them of their appointment by the President of the United States as commissioners to examine and report upon the fifth completed section of the Southern Pacific Railroad Company's main line road, commencing at a point at the end of the fortieth mile from its intersection with the San Joaquin Valley Branch of the Central Pacific Railroad and ending at the termination of the twentieth mile therefrom in section 9, township 28 south, range 26 east, Mount Diablo meridian, and I ask that it be marked as Defendants' Exhibit No. 271.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as

Defendants' Exhibit No. 12, I offer in evidence a certified copy of the report of Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, as commissioners, of their examination and approval of the fifth section of twenty miles of the Southern Pacific Railroad Company's main line road, commencing at a point in section 2, township 25 south, range 25 east, running thence in a southeasterly direction and ending at the termination of the twentieth mile therefrom at a point in section 9, township 28 south, range 26 east, Mount Diablo meridian, which report is addressed to Hon C. Delano, secretary of the interior, and dated September 19, 1874; also a certified copy, attached, of a letter from B. R. Cowen, acting secretary of the interior, dated October 9, 1874, and addressed to the President of the United States, submitting the said report of the commissioners and recommending the acceptance of the same; also, all the endorsements which appear, including the approval by U. S. Grant, President, dated October 26, 1874. These copies are attached together, with one certificate, dated July 26, 1895, signed and sealed by John M. Reynolds, acting secretary of the interior, and I ask that they be marked Defendants' Exhibit No. 272.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 247, I offer in evidence a certified copy of a map and profile of section number five of the Southern Pacific Railroad, main line, commencing at a point in section 2, township 25 south, range 25 east, running thence in a southeasterly direction and ending at the termination of the twentieth mile therefrom, at a point

in section 9, township 28 south, range 26 east, Mount Diablo meridian, which map is attested by Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, as railroad commissioners, and endorsed as filed in the general land office October 27, 1874, and I ask that it be marked Defendants' Exhibit No. 273.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from C. Delano, secretary of the interior, dated June 23, 1875, and addressed to L. M. Foulke, Eugene L. Sullivan, and Calvin Brown, notifying them of their appointment by the President of the United States as commissioners to examine and report upon the sixth completed section of the Southern Pacific Railroad Company's main line road as constructed from a point in section 9, township 28 south, range 26 east, and running in a southeasterly direction to the termination of the twentieth mile therefrom at a point in section 5, township 30 south, range 29 east, Mount Diablo meridian, and I ask that it be marked Defendants' Exhibit No. 274.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 13, I offer in evidence a certified copy of the report of Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, as commissioners, of their examination and approval of the sixth completed section of the twenty miles of the Southern Pacific Railroad Company's main line road, commencing at a point in section 9, township 28 south, range 26 east, running thence in a southeasterly direction and ending at the termination of the

twentieth mile therefrom at a point in section 5, township 30 south, range 29 east, Mount Diablo meridian, which report is addressed to Hon. C. Delano, secretary of the interior, and dated August 3, 1875; also, a certified copy, attached, of a letter from B. R. Cowen, acting secretary of the interior, dated August 21, 1875, and addressed to the President of the United States, submitting the said report of the commissioners and recommending the acceptance of the same; also, all the endorsements which appear, including the approval of U. S. Grant, President, dated August 23, 1875. These copies are attached together, with one certificate, dated July 26, 1895, signed and sealed by John M. Reynolds, acting secretary of the interior, and I ask that they be marked Defendants' Exhibit No. 275.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 248, I offer in evidence a certified copy of a map and profile of section number six of the Southern Pacific Railroad, main line, commencing at a point in section 9, township 28 south, range 26 east, running thence in a southeasterly direction and ending at the twentieth mile therefrom in section 5, township 30 south, range 29 east, Mount Diablo meridian, which map is attested by Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, as railroad commissioners, and certified as filed in the general land office. I ask that it be marked Defendants' Exhibit No. 276.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Z. Chandler, secretary of the interior, dated

February 24, 1876, and addressed to L. M. Foulke, Eugene L. Sullivan and Calvin Brown, notifying them of their appointment by the President of the United States as commissioners to examine and report upon the seventh completed section of the Southern Pacific Railroad Company's main line road as constructed from a point in section 5, township 30 south, range 29 east, extending southeasterly to the end of the twentieth mile therefrom at a point in section 33, township 30 south, range 31 east, and I ask that it be marked Defendants' Exhibit No. 277.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 14, I offer in evidence a certified copy of the report of Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, as commissioners, of their examination and approval of the seventh completed section of twenty miles of the Southern Pacific Railroad Company's main line road, commencing at a point in section 5, township 30 south, range 29 east, and running thence in a southeasterly direction to the end of the twentieth mile therefrom at a point in section 33, township 30 south, range 31 east, Mount Diablo meridian, which report is addressed to Hon. Zachariah Chandler, secretary of the interior, dated May 27, 1876; also, a certified copy, attached, of a letter from Z. Chandler, secretary of the interior, dated June 14, 1876, addressed to the President of the United States, submitting the report of the commissioners and recommending the acceptance of the same; also, all the endorsements which appear, including the approval by U. S. Grant, President,

dated June 16, 1876. I ask that they be marked Defendants' Exhibit No. 278.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 249, I offer in evidence a certified copy of a map and profile of section number seven of the Southern Pacific Railroad, main line, commencing at a point in section 5, township 30 south, range 29 east, and running thence in a southeasterly direction twenty miles to a point in section 33, township 30 south, range 31 east, Mount Diablo meridian, which map is attested by Lewis M. Foulke, Eugene L. Sullivan and Calvin Brown, as railroad commissioners, and certified as filed in the general land office. I ask that it be marked Defendants' Exhibit No. 279.

Mr. CALL. Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a telegram from Z. Chandler, secretary of the interior, dated December 28, 1876, and addressed to L. M. Foulke, Calvin Brown and Eugene L. Sullivan, as commissioners, requesting them to examine the eighth completed section of the Southern Pacific Railroad Company's main line road, beginning at Goshen and running twenty miles westerly, and ask that it be marked Defendants' Exhibit No. 280.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit Nos. 15 and 16, I offer in evidence a certified copy of the report of Calvin Brown, Lewis M. Foulke and Eugene L. Sullivan, as commissioners, of their

examination and approval of the eighth completed section of twenty miles of the Southern Pacific Company's main line road, commencing at Goshen and running thence in a westerly direction, ending at the terminus of the twentieth mile therefrom at a point in section 2, township 19 south, range 20 east, Mount Diablo meridian, which report is addressed to Hon. Zachariah Chandler, secretary of the interior, and dated January 2, 1877; also a certified copy attached of a letter from Z. Chandler, secretary of the interior, dated January 22, 1877; and addressed to the President of the United States, submitting the said report of the commissioners and recommending the acceptance of the same; also, all the endorsements which appear, including the approval of U. S. Grant, President, dated January 25, 1877. These copies are attached together, with one certificate, dated July 26, 1895, signed and sealed by John M. Reynolds, acting secretary of the interior, and I ask that they be marked Defendants' Exhibit No. 281.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 250, I offer in evidence a certified copy of a map and profile of section number eight of the Southern Pacific Railroad, main line, commencing at Goshen and running thence in a westerly direction to the end of the twentieth mile therefrom in section 2, township 19 south, range 20 east, Mount Diablo meridian, which map is attested by Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, railroad commissioners, and endorsed as filed in the general land office January 27, 1877. I ask that it be marked Defendants' Exhibit No. 282.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a telegram from Charles T. Gorham, acting secretary of the interior, dated January 19, 1877, and addressed to L. M. Foulke, Calvin Brown and E. L. Sullivan, as commissioners, requesting them to examine the ninth completed section of the Southern Pacific Company's main line road west of Goshen, and ask that it be marked Defendants' Exhibit No. 283.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 17, I offer in evidence a certified copy of the report of Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, as commissioners, of their examination and approval of the ninth completed section of twenty miles of the Southern Pacific Railroad Company's main line road, commencing at a point in section 2, township 19 south, range 20 east, running in a southwesterly direction and terminating at the twentieth mile therefrom at a point in section 11, township 20 south, range 17 east, Mount Diablo meridian, which report is addressed to Hon. Zachariah Chandler, secretary of the interior, and dated February 9, 1877; also, a certified copy, attached, of a letter from Charles T. Gorham, acting secretary of the interior, dated February 20, 1877, addressed to the President of the United States, submitting the report of the commissioners and recommending the acceptance of the same; also, all the endorsements which appear, including the approval of U. S. Grant, President, dated February 21, 1877. These copies are attached to-

er, with one certificate, dated July 26, 1895, signed and sealed by John M. Reynolds, acting secretary of the interior, and I ask that they be marked Defendants' Exhibit No. 284.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 251, I offer in evidence a certified copy of a map and profile of section number nine of the Southern Pacific Railroad, main line, commencing at a point in section 2, township 19 south, range 20 east, and running in a southwesterly direction, terminating at the end of the twentieth mile therefrom at a point in section 11, township 20 south, range 17 east, Mount Diablo meridian, which map is attested by Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, as railroad commissioners, and filed in the general land office February 22, 1877, I ask that it be marked Defendants' Exhibit No. 285.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from C. Schurz, secretary of the interior, dated January 28, 1878, and addressed to Eugene L. Sullivan, A. S. Bender and Col. B. S. Alexander, as commissioners of the Southern Pacific Railroad, requesting them to examine the tenth completed section of the Southern Pacific Railroad Company's main line road, commencing at a point in section 33, township 30 south, range 31 east, Mount Diablo meridian, and running thence in a southeasterly direction, ending at the termination of 41.66 miles therefrom at a point in section 17, township 11 north, range

12 west, and ask that it be marked Defendants' Exhibit No. 286.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 18, I offer in evidence a certified copy of the report of Eugene L. Sullivan, Andrew S. Bender and Barton S. Alexander, as railroad commissioners, of their examination and approval of the tenth completed section of 41.66 miles of the Southern Pacific Railroad Company's main line road, commencing at a point in section 33, township 30 south, range 31 east, Mount Diablo meridian, running thence in a southeasterly direction and ending at the termination of the 41.66 miles therefrom at a point in section 17, township 11 north, range 12 west, San Bernardino meridian, which report is addressed to Hon. Carl Schurz, secretary of the interior, and dated January 30, 1878; also, a certified copy, attached, of a letter from C. Schurz, secretary of the interior, dated February 11, 1878, addressed to the President of the United States, submitting the report of the commissioners and recommending the acceptance of the same; also, all the endorsements which appear, including the approval of R. B. Hayes, President, dated February 13, 1878. These copies are attached together, with one certificate, dated July 26, 1895, signed and sealed by John M. Reynolds, acting secretary of the interior, and I ask that they be marked Defendants' Exhibit No. 287.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 252, I offer in evidence a certified

copy of a map and profile of section number ten of the Southern Pacific Railroad, main line, commencing at a point in section 33, township 30 south, range 31 east, Mount Diablo meridian, and running thence in a southeasterly direction 41.66 miles to a point in section 17, township 11 north, range 12 west, San Bernardino meridian, which map is attested by Eugene L. Sullivan, Andrew S. Bender and Barton Alexander, as railroad commissioners, and filed in the general land office February 14, 1878. I ask that it be marked Defendants' Exhibit No. 288.

Mr. CALL.—Same objection.

The further taking of the testimony herein is now adjourned until a quarter past one o'clock P. M. of this day.

October 18, 1895, 1:15 P. M.

Present: William Singer, Jr., Esq., for the defendants; Joseph H. Call, Esq., special assistant United States attorney for the plaintiff.

Mr. SINGER.—I offer in evidence a certified copy of a letter from M. L. Joslyn, acting secretary of the interior, dated December 10, 1884, and addressed to William W. Burnhans, Orlando S. Stealey and William J. Nicholas, notifying them of their appointment by the President of the United States as commissioners to examine and report upon 242.507 miles of the completed line of the Southern Pacific Railroad Company's main line road, commencing at Mojave Junction and ending at the Needles, on the Colorado river, and ask that it be marked Defendants' Exhibit No. 289.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 19, I offer in evidence a certified copy of the report of Orlando O. Stealey, W. J. Nicholas and W. W. Burhans, as railroad commissioners, of their examination and approval of the eleventh, twelfth,thirteenth, fourteenth, fifteenth and sixteenth completed sections of the Southern Pacific Railroad Company's main line road, commencing at a point in section 17, township 11 north, range 12 west, San Bernardino meridian, and running thence in a generally easterly direction, and ending at the termination of the 242.507 miles thereof at a point on the Colorado river near The Needles, which report is addressed to Hon. H. M. Teller, secretary of the interior, and dated December 27, 1884. I ask that it be marked Defendants' Exhibit No. 290.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 253, I offer in evidence a certified copy of a map and profile of section number eleven of the Southern Pacific Railroad, main line, commencing at a point in section 17, township 11 north, range 12 west, San Bernardino meridian, and running thence in an easterly direction forty miles to a point in section 6, township 10 north, range 6 west, San Bernardino meridian, which map is attested by Orlando O. Stealey, W. G. Nicholas, and W. W. Burhans, as railroad commissioners, and filed in the department of the interior January 7, 1885. I ask that it be marked Defendants' Exhibit No. 291.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 254, I offer in evidence a certified copy of a map and profile of section number twelve of the Southern Pacific Railroad, main line, commencing at a point in section 6, township 10 north, range 6 west, San Bernardino meridian, and running thence in an easterly direction forty miles to a point in section 21, township 9 north, range 1 east, San Bernardino meridian, which map is attested by Orlando O. Stealey, W. G. Nicholas, and W. W. Burhans, as railroad commissioners, and filed in the department of the interior January 7, 1885. I ask that it be marked Defendants' Exhibit No. 292.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a map and profile of section number thirteen of the Southern Pacific Railroad, main line, commencing at a point in section 21, township 9 north, range 1 east, San Bernardino meridian, and running thence in an easterly direction forty miles to a point in section 3, township 7 north, range 7 east, San Bernardino meridian, which map is attested by Orlando I. Stealey, W. G. Nicholas and W. W. Burhans, as railroad commissioners, and certified as filed in the department of the interior. I ask that it be marked Defendants' Exhibit No. 293.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a map and profile of section number fourteen of the Southern Pacific Railroad, main line, commencing at a point in section 3, township 7 north, range 7 east, San Bernardino meridian, and running thence in an easterly direction

forty miles to a point in section 12, township 5 north, range 12 east, San Bernardino meridian, which map is attested by Orlando O. Stealey, W. G. Nicholas and W. W. Burhans, and filed in the department of the interior January 7, 1885. I ask that it be marked Defendants' Exhibit No. 294.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a map and profile of section number fifteen of the Southern Pacific Railroad, main line, commencing at a point in section 12, township 5 north, range 12 east, and running thence in an easterly and northeasterly direction forty miles to a point in section 35, township 9 north, range 17 east, San Bernardino meridian, which map is attested by Orlando O. Stealey, W. G. Nicholas and W. W. Burhans, as railroad commissioners, and filed in the department of the interior January 7, 1885. I ask that it be marked Defendants' Exhibit No. 295.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a map and profile of section number sixteen of the Southern Pacific Railroad, main line, commencing at a point in section 35, township 9 north, range 17 east, San Bernardino meridian, and running thence in a northeasterly and easterly direction 42.507 miles to a point on the Colorado river near The Needles, which map is attested by Orlando O. Stealey, W. G. Nicholas and W W. Burnhans, a railroad commissioners, and certified as filed in the department of the interior. I ask that it be marked as Defendants' Exhibit No. 296.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of the appointment of George W. Bird, as railroad commissioner to examine and report upon the seventeenth completed section of the Southern Pacific Railroad Company's main line road, commencing at a point in section 11, township 20 south, range 17 east, and extending thence southwesterly 20.559 miles to a point in section 23, township 21 south, range 14 east, Mount Diablo meridian, which certificate is dated February 28, 1889, and signed by the President. I ask that it be marked Defendants' Exhibit No. 297.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of the appointment of Allen E. Morrison as railroad commissioner to examine the seventeenth completed section of the Southern Pacific Railroad Company's main line road, commencing at a point in section 11, township 20 south, range 17 east, and extending thence in a southwesterly direction 20.559 miles to a point in section 23, township 21 south, range 14 east, Mount Diablo meridian, which certificate is dated February 28, 1889, and signed by the President. I ask that it be marked Defendants' Exhibit No. 298.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of the appointment of Orlando O. Stealey as railroad commissioner to examine and report upon the seventeenth completed section of the Southern Pacific Railroad Company's main line road, commencing at a point in section 11,

township 20 south, range 17 east, and extending thence in a southwesterly direction 20.559 miles to a point in section 23, township 21 south, range 14 east, Mount Diablo meridian, which certificate is dated February 28, 1889, and signed by the President. I ask that it be marked Defendants' Exhibit No. 299.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 20, I offer in evidence a certified copy of the report of George W. Bird, Allen E. Morrison and Orlando O. Stealey, as railroad commissioners, of their examination and approval of the seventeenth completed section of 20.559 miles of the Southern Pacific Railroad Company's main line road, commencing at a point in section 11, township 20 south, range 17 east, and running thence in a southwesterly direction to a point in section 23, township 21 south, range 14 east, Mount Diablo meridian, which report is addressed to Hon. John W. Noble, secretary of the interior, and dated April 2, 1889; also, a certified copy, attached, of a letter from John W. Noble, secretary of the interior, dated October 23, 1889, submitting the said report of the commissioners and recommending the acceptance of the same; also, all the endorsements which appear, including the approval by Benjamin Harrison, President, dated November 8, 1889. These copies are attached together, with one certificate, dated July 26, 1895, and signed and sealed by John M. Reynolds, acting secretary of the interior. I ask that they be marked Defendants' Exhibit No. 300.

Mr. CALL.—Same objection.

Mr. SINGER.—In lieu of the offer heretofore made as Defendants' Exhibit No. 255, I offer in evidence a certified copy of a map and profile of section number seventeen of the Southern Pacific Railroad, main line, commencing at a point in section 11, township 20 south, range 17 east, running thence in a southwesterly direction and ending at the termination of the 20.559 miles therefrom at a point in section 23, township 21 south, range 14 east, Mount Diablo meridian, which map is attested by George W. Bird, Allen E. Morrison and Orlando O. Stealey, as railroad commissioners, and certified as filed in the department of the interior. I ask that it be marked Defendants' Exhibit No. 301.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from W. W. Curtis, acting commissioner of the general land office, dated August 12, 1871, and addressed to the register and receiver at San Francisco, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the first section of 30.26 miles of its line of road, extending from San Jose to Gilroy, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a letter from Willis Drummond, commissioner of the general land office, dated September 12, 1871, and addressed to the register and receiver at Stockton, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the first section of 30.26 miles of its line of road, extending from San Jose

to Gilroy, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with each of those letters. A copy of each of the letters and of the map are attached together, with one certificate, dated August 8, 1895, signed and sealed by E. F. Best, acting commissioner of the general land office, and I ask that they be marked Defendants' Exhibit No. 302.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Willis Drummond, commissioner of the general land office, dated December 13, 1871, and addressed to the register and receiver of San Francisco, California, saying that the Southern Pacific Railroad Company had filed its map of definite location of the second section of twenty miles of its line of road, extending from Gilroy to section 21, in township 13 south, range 6 east, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of a letter from Willis Drummond, commissioner of the general land office, dated December 13, 1871, and addressed to the register and receiver at Stockton, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the second section of twenty miles of its railroad, extending from Gilroy to section 21, township 13 south, range 6 east, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a cer-

tified copy of the map transmitted with each of those letters. A copy of each of the letters and of the map are attached together, with one certificate, dated August 8, 1895, signed and sealed by E. F. Best, acting commissioner of the general land office, and I ask that they be marked Defendants' Exhibit No. 303.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Willis Drummond, commissioner of the general land office, dated August 30, 1873, and addressed to the register and receiver at Visalia, California, saying that the Southern Pacific Railroad Company had filed its map of definite location of the third and fourth sections of twenty miles each of its line of road commencing at a point in section 19, township 18 south, range 24 east, and ending in section 2, township 25 south, range 25 east, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter. A copy of the letter and map are attached together with one certificate, dated August 8, 1895, signed and sealed by E. F. Best, acting commissioner of the general land office, and I offer them together, to be marked as Defendants' Exhibit No. 304.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from S. S. Burdett, commissioner of the general land office, dated November 27, 1874, and addressed to the register and receiver at Visalia, California, saying that the Southern Pacific Railroad Company had filed its map

of definite location and construction of an additional twenty miles of its line of railroad, extending from Delano, in section 2, township 25 south, range 25 east, to section 9, township 28 south, range 26 east, and transmitting a map showing that line, with the twenty or thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter. A copy of the letter and map are attached together, with one certificate, dated August 8, 1895, signed and sealed by E. F. Best, acting commissioner of the general land office, and I ask that they be marked Defendants' Exhibit No. 305.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from S. S. Burdett, commissioner of the general land office, dated October 26, 1875, and addressed to the register and receiver at San Francisco, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the sixth section of twenty miles of its line of road, extending from section 9, township 28 south, range 26 east, to a point in section 5, township 30 south, range 29 east, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of a letter from S. S. Burdett, commissioner of the general land office, dated October 26, 1875, and addressed to the register and receiver at Visalia, California, saying that the Southern Pacific Railroad Company had filed its map of definite location of the sixth section of twenty miles of its railroad, extending from

section 9, township 28 south, range 26 east, to a point in section 5, township 30 south, range 29 east, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of a letter from S. S. Burdett, commissioner of the general land office, dated October 26, 1875, and addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location of the sixth section of twenty miles of its line of railroad, extending from section 9, township 28 south, range 26 east, to a point in section 5, township 30 south, range 29 east, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, a certified copy of the map transmitted with each of those letters. A copy of each of the letters and of the map are attached together, with one certificate, dated August 8, 1895, signed and sealed by E. F. Best, acting commissioner of the general land office, and I ask that they be marked Defendants' Exhibit No. 306.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from J. A. Williamson, commissioner of the general land office, dated August 8, 1876, and addressed to the register and receiver at Visalia, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the seventh section of twenty miles of its line of road, extending from section 5, township 30 south, range 29 east, to a point in section 33, township 30 south, range 31 east, and trans-

mitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of a letter from J. A. Williamson, commissioner of the general land office, dated August 8, 1876, and addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the seventh twenty mile section of its road, extending from section 5, township 30 south, range 29 east, to a point in section 33, township 30 south, range 31 east, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of a letter from J. A. Williamson, commissioner of the general land office, dated August 9, 1876, and addressed to the register and receiver at San Francisco, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the seventh twenty mile section of its road, extending from section 5, township 30 south, range 29 east, to a point in section 33, township 30 south, range 31 east, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of a letter from J. A. Williamson, commissioner of the general land office, dated August 9, 1876, and addressed to the register and receiver at Independence, California, saying that the Southern Pacific Railroad Company had filed its map of definite location of the seventh twenty mile section of its road, extending from section 5, township 30 south, range

29 east, to a point in section 33, township 30 south, range 31 east, and transmitting a map showing that line, with the twenty and thirty miles of the land grant adjusted thereto; also, a certified copy of the map transmitted with each of those letters. A copy of each of those letters and of the map are attached together, with one certificate, dated August 8, 1895, and signed and sealed by E. F. Best, acting commissioner of the general land office. I ask that they be marked Defendants' Exhibit No. 307.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from J. A. Williamson, commissioner of the general land office, dated March 13, 1877, and addressed to the register and receiver at Visalia, California, saying that the Southern Pacific Railroad Company had filed its map of definite location of the eighth and ninth sections of twenty miles each of its line of road, extending from section 19, township 18 south, range 24 east, to a point in section 11, township 20 south, range 17 east, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter. A copy of the letter and map are attached together, with one certificate, dated August 8, 1895, signed and sealed by E. F. Best, acting commissioner of the general land office, and I ask that they be marked Defendants' Exhibit No. 308.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from J. A. Williamson, commissioner of the general

land office, dated June 13, 1878, and addressed to the register and receiver at Visalia, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the tenth section of 41.66 miles of its road, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of a letter from J. A. Williamson, commissioner of the general land office, dated June 13, 1878, and addressed to the register and receiver at Independence, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the tenth section of 41.66 miles of its road, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of a letter from J. A. Williamson, commissioner of the general land office, dated June 13, 1878, and addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the tenth section of 41.66 miles of its line of road, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with each of those letters. A copy of each of the letters and of the map are attached together, with one certificate, dated August 8, 1895, signed and sealed by E. F. Best, acting commissioner of the general land office, and I ask that they be marked Defendants' Exhibit No. 309.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Lewis A. Groff, commissioner of the general land office, dated April 5, 1890, and addressed to the register and receiver at Visalia, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of an additional section of 20.559 miles of its road, extending from Huron, in section 11, township 20 south, range 17 east, in a southwesterly direction to a point in section 23, township 21 south, range 14 east, and transmitting a map showing that line, with the twenty and thirty miles limits of the land granted adjusted thereto; also, attached, a certified copy of a letter from Lewis A. Groff, commissioner of the general land office, dated September 12, 1890, and addressed to the register and receiver at San Francisco, California, saying that the Southern Pacific Railroad Company had filed its map of definite location of an additional section of 20.559 miles of its road, extending from Huron, in section 11, township 20 south, range 17 east, in a southwesterly direction to a point in section 23, township 21 south, range 14 east, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with those letters. A copy of each of the letters and of the map are attached together, with one certificate, dated August 8, 1895, and signed and sealed by E. F. Best, acting commissioner of the general land office. I ask that they be marked Defendants' Exhibit No. 310.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Charles Crocker, President of the Southern Pacific Railroad Company, addressed to Hon. C. Delano, secretary of the interior, dated March 22, 1871, which accompanied the map designating the general route of the Southern Pacific branch line railroad, the map being Defendants' Exhibit No. 31 herein. I ask that this letter be marked Defendants' Exhibit No. 31A.

Mr. CALL.—Objected to as incompetent, immaterial and irrelevant.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Walter H. Smith, acting secretary of the interior, addressed to Hon. Willis Drummond, commissioner of the general land office, and dated April 3, 1871, transmitting a map filed by Charles Crocker, as president of the Southern Pacific Railroad Company, designating the general route of its branch line road, in which the secretary of the interior directed a withdrawal of the lands within twenty miles along the route designated, the map being Defendants' Exhibit No. 31. I ask that the letter be marked Defendants' Exhibit No. 31B.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Willis Drummond, commissioner of the general land office, dated April 21, 1871, addressed to the register and receiver at Visalia, California, transmitting a map showing the twenty and thirty miles limits of the Southern Pacific Railroad Company's branch line grant, and ordering a withdrawal of all the odd numbered sections within such limits, which certified copy is attached

to the map introduced herein as Defendants' Exhibit No. 256, and ask that it be marked Defendants' Exhibit No. 311.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Willis Drummond, commissioner of the general land office, dated April 21, 1871, addressed to the register and receiver of San Francisco, California, transmitting a map showing the twenty and thirty miles limits of the Southern Pacific Railroad Company's branch line grant, and ordering a withdrawal of all the odd numbered sections within such limits, which certified copy is attached to the map introduced herein as Defendants' Exhibit No. 256. I ask that the copy of the letter now introduced be marked Defendants' Exhibit No. 312.

Mr. CALL.—Mr. Singer, do you claim that the map marked Defendants' Exhibit No. 256, showing the main line and branch line of the Southern Pacific Railroad as claimed, was transmitted to the local land offices as one map, as would appear from the map itself, or do you understand that the map was sent in two parts, the first showing the withdrawal for the main line, as claimed, and in 1871 the other part showing the branch line?

Mr. SINGER.—My understanding is that the maps were transmitted separately, one showing in 1867 the main line withdrawals, and the other showing in 1871 the branch line withdrawals, and that the two have been consolidated there upon one map.

Mr. CALL.—As a matter of convenience.

Mr. SINGER.—Yes, sir; as a matter of convenience.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from C. Delano, secretary of the interior, dated February 17, 1874, and addressed to L. M. Foulke, Eugene L. Sullivan, and Calvin Brown, as commissioners of the Southern Pacific Railroad, notifying them of their appointment by the President of the United States as commissioners to examine and report upon the Southern Pacific Railroad Company's roads, and requesting them to examine and report upon the completed section of fifty miles of the branch line road, commencing at a point near Fernando, in section 3, township 2 north, range 15 west, and ending at a point in section 26, township 1 south, range 9 west, San Bernardino meridian, and I ask that it be marked Defendants' Exhibit No. 313.

Mr. CALL.—Objected to as incompetent, immaterial and irrelevant; and upon the further ground that the act of Congress of March 3, 1871, made no grant of alternate sections of land in aid of the so-called Southern Pacific Railroad branch line; and upon the further ground that said Southern Pacific Railroad branch line made no connection with the Texas Pacific Railroad at or near the Colorado river, or at any other point; and upon the further ground that the corporation, the Southern Pacific Railroad Company, as constituted in 1873 and 1874 and thereafter, by virtue of consolidations with other roads, was not authorized to construct a railroad from Tehachapi Pass, by way of Los Angeles, to the Colorado river; and upon the further ground that the Southern Pacific Railroad Company did not, within the time required by the act

of Congress of 1871, or at all, file an acceptance in the office of the secretary of the interior of the terms and conditions of said act; and upon the further ground that the issues in this case, so far as concerns the lands claimed by the Southern Pacific Railroad Company under said act of 1871, have been previously adjudicated; and upon the further ground that the lands involved in this suit were granted and reserved by the United States before any right of the Southern Pacific Railroad Company attached thereto. And I make these same objections to the preceding offers of evidence.

Mr. SINGER.—I offer in evidence a certified copy of a letter from R. B. Cowen, acting secretary of the interior, dated October 1, 1875, and addressed to Messrs. Foulke, Brown and Sullivan, as commissioners of the Southern Pacific Railroad, requesting them to examine and report upon an additional fifty miles of the Southern Pacific Railroad Company's branch line road, commencing at a point in section 27, township 1 south, range 9 west, and running in a southeasterly direction to a point in section 4, township 3 south, range 1 west, San Bernardino meridian, and I ask that it be marked Defendants' Exhibit No. 314.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a telegram from Z. Chandler, secretary of the interior, dated June 17, 1876, addressed to L. M. Foulke, Calvin Brown and Eugene L. Sullivan, as commissioners, requesting them to proceed with the examination of fifty additional miles of the Southern Pacific Railroad Com-

pany's branch line road. I ask that it be marked Defendants' Exhibit No. 315.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from Z. Chandler, secretary of the interior, dated February 6, 1877, addressed to L. M. Foulke, Calvin Brown and E. L. Sullivan, commissioners, requesting them to examine and report upon the completed section of fifty miles of the Southern Pacific Railroad Company's branch line road commencing near Fernando, in section 3, township 2 north, range 15 west and extending in a northerly direction to a point in section 17, township 11 north, range 12 west, San Bernardino meridian, and ask that it be marked Defendants' Exhibit No. 316.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of the appointment of Eugene L. Sullivan, A. S. Bender and Z. B. Sturgus, as commissioners, to examine and report upon the Southern Pacific branch line railroad, signed by the President, R. B. Hayes, and dated October 27, 1877, and I ask that it be marked Defendants' Exhibit No. 317.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from C. Shurz, secretary of the interior, dated October 27, 1877, addressed to E. L. Sullivan, A. S. Bender and Z. B. Sturgus, notifying them of their appointment by the President and requesting them to examine and report upon the section of 118.37 miles of the Southern Pacific Railroad Company's completed road, commencing

at a point in section 24, township 5 south, range 7 east, and ending at a point in section 26, township 16 south, range 22 east, San Bernardino meridian, and request that it be marked Defendants' Exhibit No. 318.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from S. S. Burdett, commissioner of the general land office, dated September 17, 1874, and addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of five sections of ten miles each of its branch line road, commencing at a point in section 3, township 2 north, range 15 west, and ending at a point in section 27, township 1 south, range 9 west, San Bernardino meridian, and transmitting a map, attached, showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter. I ask that it be marked Defendants' Exhibit No. 319.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from S. S. Burdett, commissioner of the general land office, dated December 20, 1875, addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the second section of fifty miles of its railroad, extending from a point in section 27, township 1 south, range 9 west, to a point in section 4, township 3 south, range 1 west, San

Bernardino meridian, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter. I ask that it be marked Defendants' Exhibit No. 320.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from U. J. Baxter, acting commissioner of the general land office, dated August 19, 1876, addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the third section of fifty miles of its branch line road, extending from a point in section 4, township 3 south, range 1 west, to a point in section 24, township 5 south, range 7 east, San Bernardino meridian, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter. I ask that it be marked Defendants' Exhibit No. 321.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from J. A. Williamson, commissioner of the general land office, dated March 27, 1877, addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the fourth section of 78.59 miles of its branch line road, commencing at a point in section 3, township 2 north, range 15 west, and ending at a point in section 17, township 11

north, range 12 west, San Bernardino meridian, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter. I ask that it be marked Defendants' Exhibit No. 322.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence a certified copy of a letter from J. A. Williamson, commissioner of the general land office, dated April 9, 1878, addressed to the register and receiver at Los Angeles, California, saying that the Southern Pacific Railroad Company had filed its map of definite location and construction of the fifth section of 118.37 miles of its branch line road, commencing at a point in section 24, township 5 south, range 7 east, and ending at a point in section 26, township 16 south, range 22 east, San Bernardino meridian, and transmitting a map showing that line, with the twenty and thirty miles limits of the land grant adjusted thereto; also, attached, a certified copy of the map transmitted with that letter. I ask that it be marked Defendants' Exhibit No. 323.

Mr. CALL.—Same objection.

Mr. SINGER.—I offer in evidence the printed report of the general land office for the year 1875, for the purpose of showing, by the items on page 409 thereof, that the estimated quantity of land embraced in the twenty and thirty miles limits of the Southern Pacific main line grant, is six million acres, and that the estimated quantity which the company will receive from the grant is three

million seven hundred and fifty thousand acres, and that the estimated quantity embraced in the twenty and thirty miles limits of the Southern Pacific branch line grant is three million five hundred and twenty thousand acres, and the estimated quantity which the company will receive from such grant is three million acres. I ask that the examiner copy those items from page 409 of the report, introduced, and that such copy be attested and marked Defendants' Exhibit No. 324.

Mr. CALL.—Objected to as irrelevant and immaterial.

Mr. CALL.—I offer another part of the same report on pages 408 and 409, for the purpose of showing that the estimated quantity which the Atlantic & Pacific Railroad Company would receive under its grant is forty-two million acres, and the estimated quantity which it will receive within the limits of its grant is forty million acres.

Mr. SINGER.—I object to the offer as irrelevant and immaterial.

WILLIAM H. ROBINSON, a witness produced on behalf of the defendants, being first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

By Mr. SINGER.—Q. 1. Where do you reside, Mr. Robinson? A. San Francisco.

Q. 2. What is your occupation?

A. Surveyor and draftsman.

Q. 3. For how long have you been engaged as a surveyor and draftsman? A. Last nine years.

Q. 4. During that time have you been actively employed in projecting field notes, preparing maps and the like work? A. During the entire time.

Q. 5. I will show you a map, upon which is endorsed, "United States vs. S. P. R. R. Co., et al., No. 600, Exhibit A attached to answer, filed January 22, 1895, William M. Van Dyke, Clerk," and ask you if you have seen the map before. A. Yes, sir.

Q. 6. Do you know who prepared the map?

Mr. CALL.—Objected to as incompetent, immaterial and irrelevant.

A. The original map of which that is a copy?

Q. 7. (By Mr. SINGER.) This map. Yes, the original from which this is a blue print.

Mr. CALL.—Same objection.

A. Yes, sir.

Q. 8. (By Mr. SINGER.) Who drew the map?

Mr. CALL.—Same objection.

A. I did.

Q. 9. (By Mr. SINGER.) I will ask you from what data you projected on this map the solid yellow line marked "S. P. R. R., main line, constructed."

Mr. CALL.—Same objection.

A. From the maps of constructed lines in the chief-engineer's office of the Southern Pacific Railroad.

Q. 10. (By Mr. SINGER.) Have you since compared that line with any other maps?

Mr. CALL.—Same objection.

A. With the tracings I saw today.

Q. 11. (By Mr. SINGER.) Shown you today.

Mr. CALL.—Same objection.

A. Yes, sir.

Q. 12. (By Mr. SINGER.) In Court. Did you compare them with the profile maps marked Defendants' Exhibits Nos. 291, 292, 293, 295 and 296?

Mr. CALL.—Same objection.

A. Yes, sir.

Q. 13. (By Mr. SINGER.) Is that yellow line marked "S. P. R. R., main line, constructed," correctly drawn upon this map according to the exhibits Nos. 291, 292, 293, 294, 295 and 296, with which you have today compared it?

Mr. CALL.—Same objection.

A. As well as may be according to that scale.

Q. 14. (By Mr. SINGER.) Are the dotted lines which appear upon the map parallel with the solid yellow line marked "S. P. R. R., main line, constructed," which lines are marked respectively twenty mile limit and thirty mile limit, correctly placed upon the map according to its scale, distant respectively that far from the main line road as there placed?

Mr. CALL.—Same objection.

A. Yes, sir.

Mr. SINGER.—That is all.

Cross-Examination.

By Mr. CALL.—Q. 15. Upon what scale is this map drawn? A. Eighteen miles to one inch.

Q. 16. Eighteen miles to the inch. The squares marked on this map are then intended to be congressional townships? A. Yes, sir.

Q. 17. Then the scale would be three congressional townships to the inch? A. Yes, sir.

Q. 18. The twenty mile limit should then be three and one-third congressional townships from the line of road?

A. Yes, sir.

Q. 19. Turning to the east line of range 14 east, state if the twenty mile limit is there not marked more than three and a third townships from the line of road.

A. Very slightly in excess; yes, sir.

Q. 20. You designed that map, then, only to indicate in a general way, as near as might be, the line and limits of the grant?

A. Remember that scale is never drawn for any other purpose.

Q. 21. Are you at present in the employ of the Southern Pacific Railroad Company? A. Yes, sir.

Q. 22. How long have you been in their employ, about?

A. Well, I don't know how to answer that question. I commenced with the railroad company nine years ago, and I have been with them nearly all that time since, with the exception of one year.

Mr. CALL.—That is all.

Mr. SINGER.—I will ask you, Mr. Call, if you will waive verification and signature by this witness.

Mr. CALL.—Yes, sir; that is agreeable.

The further taking of testimony herein is adjourned until October 19, 1895, at 9 o'clock A. M.

October 19, 1895, 9 o'clock A. M.

Present: William Singer, Jr., Esq., for the defendants; Joseph H. Call, Esq., special assistant United States attorney, for the plaintiff.

It is stipulated that the defendants may withdraw any of the exhibits offered at the hearing today and yesterday, but not including exhibits from any other case, upon substituting a full and complete copy of each of said exhibits, to be compared and certified to by the clerk of this Court; and it is further stipulated that in order to make copies of said exhibits the defendants may withdraw such exhibits for the purpose of making such copies, to be returned to the files of the Court within fifteen days from date hereof. And it is further stipulated that an order of Court shall be entered in accordance with this stipulation.

The further taking of testimony herein is adjourned to be resumed upon further notice.

[Endorsed]: Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

M. N. (4-207.) W. J. M.

Plaintiff's Exhibit No. 1.

Letter.

Department of the Interior.

General Land Office.

Washington, D. C., March 22, 1895.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter addressed to C. P. Huntington, together with copies of its

enclosures, is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
Commissioner of the general land office.

[Seal.]

6731 b-2 m

Copy. V. W. H. 120 719-93. W. J. M.
M. L. N.

Refer in reply to this initial: F. M. N.

Department of the Interior.
General Land Office.
Washington, D. C., December 7, 1893.

Address only the commissioner of the general land office.

C. P. Huntington, Esq., President Southern Pacific Company, New York City:

Sir:

Enclosed herewith you will find a copy of departmental order of the twenty-ninth ultimo, in the matter of the conflict of grants made to aid in the construction of the Atlantic & Pacific and the Southern Pacific (branch line) Railroads in California.

Following the directions therein contained, you are now called upon to reconvey to the United States the tracts of land described in the accompanying lists, they being within the overlapping limits of the grant aforesaid (not

involved in pending suits) and shown by the records to have been patented to the Southern Pacific Company.

Ninety days will be allowed the company within which to reconvey the said lands, and in the event of its failure so to do, steps will be taken towards instituting suit to set aside the patents covering them.

Very respectfully,

S. W. LAMOREUX,

Commissioner.

GRANTED LIMITS SOUTHERN PACIFIC—GRANTED LIMITS ATLANTIC & PACIFIC.

Parts of sections	S.	T. N.	R. W.	Area.	Remarks.
E. ½ SW. ¼.....	13	1	11	80.	Patent No. 1, Mar. 29, 1876.
Lots 1, 2, & 3, E. ½ NE. ¼ NE. ¼ NW. ¼, W. ½ NW. ¼	15	"	"	431 12	" " "
E. ½ SE. ¼ NW. ¼ SE. ¼ & NW. ¼ SW. ¼					
Lots 3 & 4, *S.* ½ SE. ¼ S. ½ NE. ¼ & SE. ¼ NW. ¼.... ...	17	"	"	228 77	" " "
Lots 1 & 2 of NE. ¼ Lots 3, 4 & 5 .. of NW. ¼ & NE. ¼ SE. ¼	3	1	12	220 28	Patent No. 2, Apr. 4, 1879.
Lots 1 to 9 inc.....	5	"	"	264 48	" " "
Lots 1 to 5 inc.....	11	"	"	131 75	" " "
Lots 1, 2 & 4.....	13	1	12	70 26	" " "
All.....	3	1	14	619 77	" " "
Lots 1 & 2.....	5	"	"	7 39	" " "
All.....	9	"	"	542 24	" " "
NW. ¼.....	3	3	19	160	Patent No. 6, Dec. 27, 1883.
All.....	15	4	19	640	" " "
E. ½ NE. ¼ & E. ½ SE. ¼	17	"	"	160	" " "
All.....	21	"	"	640	" " "
E. ½ NE. ¼ & NE. ¼ Se *I* ¼....	29	"	"	120	" " "

GRANTED LIMITS SOUTHERN PACIFIC—GRANTED LIMITS ATLANTIC & PACIFIC.

Parts of sections	S.	T. N.	R. W.	Area.	Remarks.
SE. ¼ NE. ¼	33	4	19	40	Patent No. 6, Dec. 27, 1883.
NW. ¼ NW. ¼	13	1	11	40	" " "
W. ½ NE. ¼ SE. ¼ NW. ¼ & NE. ¼ SW. ¼	15	"	"	160	Patent No. 6, Dec. 27, 1883.
Lot 1 & SE. ¼ NE. ¼	5	3	19	79 95	" " "
W. ½	23	4	19	320	" " "
N. ½	27	"	"	20	" " "
Lot 2 of SW. ¼ E. ½ SW. ¼ & SE. ¼	7	1	11	283 75	Patent No. 8, Aug. 8, 1884.
All	1	7	15	640	" " "
N. ½	3	"	"	320	" " "
E. ½ NW. ¼ & N. ½ NE. ¼	5	"	"	150	" " "
N. ½	13	"	"	320	" " "

GRANTED LIMITS SOUTHERN PACIFIC—INDEMNITY LIMITS ATLANTIC & PACIFIC.

Parts of sections	S.	T. N.	R. W.	Area.	Remarks.		
SE. ¼	19	1	8	160	Patent No. 1, March 29, 1876.		
Lots 1, 3 & 4 NW. ¼ NE. ¼ & SW. ¼ NW. ¼	23	1	11	162 11	"	"	"
		S.	W.				
Lot 1	1	1	11	14.97	"	"	"
NE. ¼ E. ½ NW. ¼, lots 1, 2, 3, 4, 5 & 6 & N. ½ SW. ¼	13	"	"	481 54	"	"	"
Lots 1 & 5	3	1	12	19 76	"	"	"
NE. ¼ SW. ¼	7	"	"	40	"	"	"
SE. ¼ NW. ¼ NE. ¼ SW. ¼ & lot 2	11	"	"	83 50	"	"	"
NE. ¼	15	"	"	160	"	"	"
NE ¼ & E ½ SE ¼	17	"	"	240	"	"	"
N ½ SE ¼	19	"	"	80	"	"	"
E ½ NE. ¼, E ½ SE ¼ & NW ¼	31	"	"	327 61	"	"	"
E ½ SE ¼ & lots 1 & 2	3	1	14	124 53	"	"	"
		S.	W.				
N ½ SE ¼ SW ¼ SE ¼ & lot 3	7	1	14	153 33			

Parts of sections	S.	T. S.	R. W.	Area.	Remarks.		
SE ¼ & NW ¼ NW ¼	11	14	*200*		Patent No. 1, Mar. 29, 1876.		
Lots 1, 2, 3, & 4	23	"	"	51 12	"	"	"
SW ¼	13	2	14	160	"	"	"
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10, E ½ SE ¼ & S ½ SW ¼	17	"	"	392 59	"	"	"
		N.	W.				
NW ¼	13	1	8	160	Patent No. 2, Apr. 4, 1879.		
S ½	21	"	"	320	"	"	"
N ½	23	"	"	320	"	"	"
Lots 1, 2 & 3	25	"	"	67 51	"	"	"
		S.	W.				
NE ¼	5	1	6	167	"	"	"
NW ¼	9	"	"	160	"	"	"
All	21	1	7	640	"	"	"
All	1	1	8	640 60	"	"	"
All	11	1	8	640	"	"	"
NE ¼ NE ¼, S ½ NE ¼, SE ¼ & lots 1, 2, 3 & 4	15	"	"	416	"	"	"
Lots 1 & 2	21	"	"	32 10	"	"	"
N ½ NE ¼	23	"	"	80	"	"	"
Lots 1, 2, 3 & 4	25	"	"	138 34	"	"	"
S ½ SE ¼ & S ½ SW ¼	27	"	"	160	"	"	"
Lots 5, 6, 7 & 8	7	1	11	42 24	"	"	"

Parts of sections	S.	T. S.	R. W.	Area.	Remarks.
Lots 2 & 3	5	1	12	6 87	Patent No. 2, Apr. 4, 1879.
NE ¼	7	"	"	160	" " "
NE ¼ NE ¼ (or lot 1) and NW ¼ NW ¼	11	"	"	70 90	" " "
E ½ NE ¼	13	"	"	80	" " "
Lot 1 of NW ¼	19	"	"	42 87	" " "
NW ¼, NW ¼ SW ¼ & E ½	29	"	"	520	" " "
NW ¼	25	1	14	160	" " "
		S.	W.		
S ½ NE ¼	11	2	14	80	Patent No. 4, June 26, 1882.
Lot 1 of NW ¼	7	1	11	40	" " "
Lots 3 & 4 of SW ¼	7	1	12	83 16	" " "
		N.	W.		
NE ¼ NE ¼, S ½ NE ¼ NW ¼ NW ¼, S ½ NW ¼, & S ½	23	6	6	560	Patent No. 6, Dec. 27, 1883.
All	25	"	"	640	" " "
All	27	1	6	640	" " "
All	29	"	"	640	" " "
All	31	"	"	642 92	" " "
All	35	"	"	640	" " "
Lots 1, 2, 3 & 4	21	1	7	136 56	" " "

Parts of sections	S.	T.	R.	Area.	Remarks.
E ½, NE ¼, E ½ SE ¼, Lots 1, 2, 3 & 4.....	27	1	7	173 48	Patent No. 6, Dec. 27/83.
E ½ NE ¼, NW ¼ NE ¼, SE ¼ SE ¼ & lots 1, 2, 3 & 4..	35	"	"	165 88	" " "
W ½ SW ¼.....	13	1	8	80	" " "
S ½ SE ¼, S ½ SW ¼ & lots 1, 2, 3 & 4	31	1	14	316 40	" " "
S ½ SE ¼, S ½ SW ¼ & lots 1, 2, 3 & 4..	33	"	"	249 20	" " "
E ½	5	"	"	320	" " "
		S.	W.		
S ½ NE ¼ SW ¼ NW ¼ & lots 3, 4, 5, 7 & 10.....	3	1	14	259 98	" " "
All.....	5	"	"	640 54	" " "
N ½	7	"	"	320 44	" " "
Lots 1, 2 & 3, S ½ NE ¼ SE ¼ NW ¼ & S ½	1	1	15	560	" " "
NE ¼, S. ½ NW ¼ & S ½	11	"	"	560	" " "
All.....	27	1	5	530 30	" " "
W ½ SW ¼.....	9	1	6	80	" " "
W ½	11	"	"	320	" " "
S ½.....	13	"	"	320	" " "
All.....	15	"	"	640	" " "
E ½ NE ¼.....	17	"	"	80	" " "
Lots 1 & 2 & NE ¼ SW ¼	13	1	4	113 54	" " "

Parts of sections	S.	T. N.	R. W.	Area	Remark.
S ½ SW ¼.....	15	1	9	80	Patent No. 6, Dec. 27, 1883.
S ½ SE ¼.....	19	"	"	80	" " "
NW ¼ NE ¼ & S ½.....	21	"	"	360	" " "
SW ¼ SW ¼.....	15	1	10	40	" " "
E ½ NE ¼, N ½ SE ¼ & lots 5 & 6.....	19	"	"	189 43	" " "
NE ¼ SW ¼, NE ¼ NE ¼ & lots 3 & 4.....	21	"	"	155 44	" " "
SW ¼ NE ¼, W ½ SE ¼ & W ½.....	11	1	4	440	Patent No. 9, Jany. 9, 1885.
N ½ NE ¼.....	25	1	10	80	" " "
		S.	W.		
Lots 5, 6 & 7.....	33	1	9	79 95	" " "
Lots 1, 2, 3 & 4 & S ½ SW ¼.....	35	"	"	176	" " "

INDEMNITY LIMITS SOUTHERN PACIFIC—GRANTED LIMITS ATLANTIC & PACIFIC.

Parts of sections	S.	T. N.	R. W.	Area	Remarks.
W ½ NW ¼.....	5	7	15	80	Patent No. 10, Jany. 9, 1885.

Ex. M. B. H.
A. C. L.
Refer in reply to this initial:
10875-'93
Address only the commissioner of the general land office.

Department of the Interior.
Washington, D. C. Nov. 29, 1893.

The Commissioner of the General Land Office:

Sir:

In the matter of the conflict of grants made to aid in the construction of the Atlantic & Pacific, and the Southern Pacific (branch line) Railroads, the Supreme Court in the cases of the U. S. v. Southern Pacific Railroad Company (146 U. S. 570) and U. S. v. Colton Marble & Lime Company (146 U. S. 615) held that the lands within both the primary and indemnity limits of the grant for the Atlantic & Pacific R. R. Co., where they conflicted with the primary limits of the grant for the Southern Pacific R. R. Co. (branch line) were excepted from the grant made to the latter company.

Within said conflicts it appears, however, that many acres, about 90,000, have heretofore been erroneously patented to the Southern Pacific Railroad. Trespass suits are now pending involving about 900,000 acres of the lands within the conflicts referred to, which includes all of the patented lands in certain townships, but as to the patented lands outside of the townships named in said suits no steps seem to have been taken, as yet, by your office to recover title as contemplated by the act of March 3, 1887 (24 Stats. 556).

In his letter of August 21, 1893, Mr. Joseph H. Call, special assistant United States attorney, enclosed a list of the townships included in the overlap of the grants before described but not embraced in pending suits, and requested that demand be made for the reconveyance of all patented lands on account of the Southern Pacific grant within said townships.

Your office letter of September 19, 1893, reported thereon as follows:

"Following Mr. Call's suggestions, in which the honorable attorney general concurs, I have prepared a list of the patented lands of class No. 1 (embracing the lands in the conflict just referred to), and, if in the light of this report, you deem it necessary, a rule will be served on the Southern Pacific Company to show cause why proceedings should not be taken as contemplated by the act of March 3, 1887 (24 Stats., 556), for the recovery of these lands."

This report was not referred to the assistant attorney general, who had knowledge of the fact relative to the conflict between these grants, but was, with a simple letter of transmittal forwarded to the attorney general, by the acting secretary's letter of September 22, 1893.

In this way the request for instruction made by your letter has been overlooked and no further steps taken towards the recovery of these lands.

From a consideration of the matter I have now to direct that demand be made at once upon the Southern Pacific Railroad Company for the reconveyance of the patented lands within the townships covered by the overlap

in the grants and not embraced in the pending suits, and that report be made of the action taken by the company at the earliest possible date.

The previous requirement made in cases of a like nature for the issue of a rule to show cause, preliminary to the demand for reconveyance, will be dispensed with in the present case.

Very respectfully,

HOKE SMITH,

Secretary.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 1, Leo Longley, special examiner. Filed Nov. 20, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 2.

Letter.

M. N. (4—207.) W. J. M.

Department of the Interior.

General Land Office.

Washington, D. C., March 22, 1895.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter addressed to C. P. Huntington, together with its enclosure, is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of my office to be affixed, at

the city of Washington, on the day and year above written.

S. W. LAMOREUX,
Commissioner of the general land office.

[Seal]

6731 b-2 m

Copy V. W. H. 3260-'94. W. J. M.

M. L. H.

Refer in reply to this initial:

F.

M. N.

Address only the Commissioner of the General Land Office.

Department of the Interior.
General Land Office.
Washington, D. C., Jan. 17, 1894.

C. P. Huntington, Esq., President Southern Pacific Company, New York City:

Sir:

Respectfully referring to my letter to you of the seventh ultimo, calling upon you, as President of the Southern Pacific Railroad Company, to reconvey to the United States certain lands within the overlapping limits of the grant for the Southern Pacific Railroad (branch line), and that for the Atlantic & Pacific Railroad, in California, you are advised that the tracts described in the accompanying lists were inadvertently omitted from the lists of lands which accompanied said letter and should have been included therein, they being within the overlapping limits aforesaid (not involved in pending suits), and shown by

the records to have been patented to the Southern Pacific Company.

These lists of lands are submitted as supplemental to those which accompanied said letter of the seventh ultimo; and are covered by departmental order of November 29, 1893 (copy enclosed with former letter), and in accordance with the instructions therein contained, the said Southern Pacific Railroad Company is now called upon to reconvey these lands to the United States within ninety days.

Very respectfully,

S. W. LAMOREUX,
Commissioner.

GRANTED LIMITS SOUTHERN PACIFIC—GRANTED LIMITS ATLANTIC & PACIFIC.

S. B. M.

Parts of sections	S.	T. N.	R. W.	Area	Remarks.
Lots 1, 2, 3, 4, & W. ½ NW. ¼	11	1	14	154 24	Pat. No. 2, Apr. 4/79.
Lot 1	15	"	"	2 92	" " "
Lots 1, 2, 3, & 4	27	1	14	78 49	" No. 6, Dec. 27/83.
N. ½	7	7	13	318	" No. 9, Jany. 9/85.
N. ½	9	7	14	320	" " "
N. ½	11	"	"	320	" " "

GRANTED LIMITS SOUTHERN PACIFIC—INDEMNITY LIMITS ATLANTIC & PACIFIC.

S. B. M.

Parts of sections	S.	T. S.	R. W.	Area	Remarks.
Lot 1	11	1	13	.19	Pat. No. 1, Mar. 29/76.
NE. ¼ NE. ¼, SE. ¼ SE. ¼ Lot 1 of NE. ¼ & lot 4 of SE. ¼..	13	1	13	99 28	" " " "
Lot 1	3	2	11	21 35	" " " "
NE. ¼ SE ¼ & S. ½ SE. ¼.....	9	"	"	120	" " " "
Lots 1 & 2.....	3	2	13	4	" " " "
Lot 1	5	"	"	2	" " " "
Lots 3 & 4 of SE. ¼.	25	1 N.	13 W.	18 57	Pat. No. 2, Apr. 4/79.
All	1	7	14	636 86	Pat. No. 9, Jany. 9/85.
All.....	3	"	"	631 20	" " " "
All.....	5	"	"	628 74	" " " "

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 2. Leo Longley, special examiner. Filed Nov. 20, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 3.

Articles of Association, Amalgamation and Consolidation.

Articles of association, amalgamation and consolidation, made and executed on this the twelfth day of August, A. D. 1873, by and between the Southern Pacific Railroad Company of the first part and the Southern Pacific Branch Railroad Company of the second part:

Witnesseth: That whereas the said party of the first part heretofore, towit, on the eleventh day of October, A. D. 1870, was duly incorporated and organized under the laws of the State of California by the amalgamation and consolidation of the following railroad corporations theretofore existing under the laws *under the laws* of said State, towit, The San Francisco & San Jose Railroad Company, The Santa Clara & Pajaro Valley Railroad Company, The Southern Pacific Railroad Company, and the California Southern Railroad Company, pursuant to articles of amalgamation and consolidation of that date by them agreed upon, which articles were subsequently amended, towit, on the eleventh day of April, A. D. 1871, by virtue of the laws of said State, whereby said corporation became duly incorporated and organized under the laws of said State for the purpose of purchasing, constructing, owning, maintaining and operating a continuous line of railroad from the city of San Francisco in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kearn, San Bernardino and San

Diego to some point on the Colorado river in the south-eastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near *Tehichepa* Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City in said last named county, a distance of forty five miles, as near as may be; and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established.

And whereas the said party of the second part was, heretofore, towit, on the twenty-third day of December, A. D. 1872, duly incorporated and organized under the laws of the State of California for the purpose of purchasing, constructing, owning, maintaining and operating a railroad from a point on the Southern Pacific Railroad (the railroad of the party of the first part) at or near Salinas City in the county of Monterey, southeasterly to a point in Kern county south of Tulare Lake, intersecting the San Joaquin valley division of the said Southern Pacific railroad; also from a point on the above-described line, at or near San Miguel in San Luis Obispo county, thence in a southerly direction to a point of intersection, in Los Angeles county with the line of the said Southern Pacific railroad running from Tehachipi Pass by way of Los An-

geles to Fort Yuma, said road passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles, and said roads, in the aggregate, being, as near as may be, four hundred and twenty-eight miles in length.

And whereas said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, land and franchises will be mutually advantageous,

And whereas more than three-fourths in value of all the stockholders in interest of each of said parties have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth;

Now, therefore, under and by virtue of the statute of the State of California, in such case made and provided, the said parties do hereby mutually covenant and agree, each with the other, to the following articles, to-wit,

Articles First: Said parties do hereby amalgamate and consolidate themselves into a new corporation under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims, and demands of every kind whatsoever as well in possession as in expectancy, at law or in equity, and do grant, convey and vest the same in the said new corporation, as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all

conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, judgments, claims and charges thereon or in any wise affecting the same or any part thereof.

Article Second: The object and purpose of said new corporation shall be to purchase, construct, own, maintain, and operate the several lines of railroads hereinbefore described, towit, a line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego to some point on the Colorado river in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Tehichipa Pass, by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river, passing through the counties of Los Angeles, San Bernardino and San Diego, a distance of three hundred and twenty-four miles as near as may be; also a line of railroad from the town of Gilroy in the county of Santa Clara in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Selinas City in said last-named county, a distance of forty-five miles, as near as may be; also a line of railroad from a point on the line thirdly above described at or near Salinas City in the county of Monterey southeasterly through said county and into Kern county to a point south of Tulare Lake in said last-named county, intersecting at said point the line of railroad first above described, a distance of one

hundred and eighty miles, as near as may be; also a line of railroad from a point on the last above described line, at or near San Miguel, in the county of San Luis Obispo, thence in a southerly direction through said county, the county of Santa Barbara and into the county of Los Angeles to a point of intersection with the line of railroad secondly above described, towit, the line from Tehichipa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river, a distance of two hundred and forty miles as near as may be—making in all fifteen hundred and nine miles, as near as may be, and such branches to said lines as the board of directors of said new corporation may hereafter, from time to time, establish.

Article Third: The board of directors of said new corporation shall consist of seven persons and the following named persons shall act as such directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation hereafter to be adopted, viz: C. P. Huntington, D. D. Colton, Robert Robinson, Charles Mayne, S. T. Gage, E. H. Miller, Jr., and J. L. Willcutt.

Article Fourth: The capital stock of said new corporation shall be ninety million dollars divided into nine hundred thousand shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

Article Fifth: Each stockholder of each of said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of

the capital stock of his respective company, upon the sameterms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him, and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

Article Sixth: And the said several parties of the first and second parts, each for *its self*, hereby sell-, assigns, transfers, grants, bargains, releases and conveys to the said new and consolidated company and corporation, its successors and assigns forever, all its property, real, personal and mixed of every kind and description; all its capital stock; all its interest in the shares of its capital stock subscribed but not fully paid for; all credits, effects, judgments, decrees, contracts, agreements, claims, dues, and demands, of every kind and description; and all rights, privileges and franchises, corporate and otherwise, held, owned, or claimed by said parties of the first part and second parts, or either of them, in possession or expectancy either at law or in equity, subject however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, claims and charges thereon, or in anywise affecting the same.

Article Seventh: The said new and consolidated company and corporation is to be liable for, and shall fulfill, perform, do and pay all and each of the contracts, and

agreements, covenants, duties, obligations, liabilities, debts, dues, and demands of the said several parties of the first and second parts; but this amalgamation and consolidation shall not in any way relieve the said parties of the first and second parts, or the stockholders thereof, from any and all just liabilities.

In testimony whereof, the said party of the first —— has caused this instrument to be signed by its vice-president (the president being absent) and its secretary, and its corporate seal to be thereunto affixed, and the said party of the second part has caused this instrument to be signed by its president and secretary, and its corporate seal thereunto affixed in pursuance of orders and resolutions of their several boards of directors made on the twelfth day of August, 1873.

SOUTHERN PACIFIC RAILROAD COMPANY,

By David D. Colton,

Vice President.

J. L. WILLCUTT,

[Seal] Secretary.

SOUTHERN PACIFIC BRANCH RAILROAD COMPANY,

By B. R. Crocker,

President.

By E. H. MILLER, Jr.,

[Seal] Secretary.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Railroad Company, party of the first part to the foregoing new

articles of association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation and to the said new articles of association, this twelfth day of August, A. D. 1873.

LELAND STANFORD,
CONTRACT & FINANCE CO.,
By W. E. Brown,
Secretary.

MARK HOPKINS,
ROBERT ROBINSON,
S. T. GAGE,
CHAS. MAYNE,
DAVID D. COLTON,
J. L. WILLCUTT,
E. H. MILLER, Jr.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Branch Railroad Company, party of the second part to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation and to the said new articles of association, this twelfth day of August, A. D. 1873.

E. W. HOPKINS,
C. H. CUMMINGS,
B. R. CROCKER.

LELAND STANFORD,
E. H. MILLER, Jr.,
ALBERT GALLATIN,
MARK HOPKINS.

State of California—Department of State.

I, W. C. Hendricks, secretary of state of the State of California, do hereby certify that I have carefully compared the annexed copy of articles of association, amalgamation and consolidation between the Southern Pacific Railroad Co. and the Southern Pacific Branch Railroad Co. with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the fifth day of September, A. D. 1889.

W. C. HENDRICKS,
Secretary of State.
By H. B. Davidson,
Deputy.

[Seal]

[Endorsed]: (Copy.) No. 258. Articles of association, amalgamation and consolidation of the Southern Pacific Railroad Company with the Southern Pacific Branch Railroad Company. (Endorsed): Filed in the office of the secretary of State August 19, 1873. Drury Melone, secretary of State. H. By H. H. Russell, deputy. Record Book 4, page 584. "Exhibit A B."

Stipulated before the master Exhibit B. J. D. R. J. H. C.

United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 68. Master's Exhibit 125. Filed March 20, 1890. Chas. L. Batcheller, master and examiner in chancery.

United States Circuit Court, Southern District, California. United States vs. Southern Pacific Railroad Company. 195. Master's and examiner's exhibit No. 1. E. H. Lamme, master and examiner in chancery. For complainant.

Plaintiff's Exhibit No. 1. E. H. Lamme, Examiner.

Filed November 22, 1889. Wm. M. Van Dyke, Clerk.

E. H. L. 3.

United States Circuit Court, Southern District, California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 3. E. H. Lamme, Master and examiner in chancery.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 587. Plaintiff's Exhibit No. 1. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 3. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 4.

Articles of association, amalgamation and consolidation made and executed this seventeenth day of December, A. D. 1874, by and between the Southern Pacific Railroad Company, of the first part, and the Los Angeles & San Pedro Railroad Company, party of the second part.

Witnesseth, that, whereas, the said party of the first part heretofore, towit: on the nineteenth day of August,

A. D. 1873, was duly incorporated and organized under the law of the State of California by the amalgamation and consolidation of the following railroad corporations theretofore existing under laws of said State, towit: The San Francisco & San Jose Railroad Company, the Santa Clara & Pajaro Railroad Company, the Southern Pacific Railroad Company, the California Southern Railroad Company, and the Southern Pacific Branch Railroad Company, all of said railroad companies being incorporated and duly organized under the laws of the State of California prior to the thirty-first day of December, A. D. 1872, pursuant to articles of amalgamation and consolidation of that date by them agreed upon, which, by virtue of the law of said State entitled, "An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto," approved May 20, 1861, whereby said corporation became duly incorporated and organized under the laws of said State for the purposes of purchasing, constructing, owning, maintaining, and operating, continuous lines of railroad from the city and county of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego, to some point on the Colorado river in the southeastern part of the State of California, a distance of six hundred and thirty-five and eighty-seven one-hundredths miles as near as may be; also a line of railroad from a point at or near Tahachapa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the

Colorado river, a distance of three hundred and fifty-six and seven one-hundredths miles, as near as may be; also, a line of railroad from the town of Gilroy in the county of Santa Clara in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City in said last named county, a distance of thirty-five and one-tenth miles, as near as may be, and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established. And also from a point on said road aforesaid, at or near Salinas City in the county of Monterey southerly to a point in Kern county south of Tulare Lake intersecting the San Joaquin division of the said Southern Pacific Railroad; also from a point on the above described line at or near San Miguel in San Luis Obispo county, thence in a southerly direction to a point of intersection in Los Angeles county with the line of the said Southern Pacific Railroad running from Tahachapa Pass by way of Los Angeles to Fort Yuma, said roads passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles and said roads in the aggregate being as near as may be, four hundred and two (402) miles in length.

And, whereas, the said party of the second part was heretofore, towit: on the eighteenth day of February, A. D. 1868, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, and maintaining and operating a railroad from a point in the city of Los Angeles, in the coun-

ty of Los Angeles, State of California, to a point on or near the bay of San Pedro in said county, a distance of twenty and five-tenths miles.

And, whereas, said parties believe a consolidation and amalgamation of their capital stock, debts, properties, assets, roads, telegraphs, lands and franchises will be mutually advantageous;

And, whereas, more than three-fourths in value of the stockholders in interest of each of said parties have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth;

And, whereas, all of the railroad corporations included in the several consolidations were duly incorporated prior to the thirty-first day of December, A. D. 1872.

Now, therefore, under and by virtue of the fortieth section of a law of the State of California entitled, "An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto," approved May 20, 1861, and the several amendments thereto, the said parties do hereby mutually covenant and agree, each with the other, to the following articles, towit:

Article First. Said parties do hereby amalgamate and consolidate themselves into a new corporation under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privi-

leges, claims and demands of every kind whatsoever, as well in possession as in expectancy, at law or in equity, and do grant, convey and vest the same in the said new corporation as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, judgments, claims and charges thereon, or in any wise affecting the same or any part thereof.

Article Second. The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate the several lines of railroad hereinbefore described, towit: Continuous lines of railroad from the city and county of San Francisco in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego to some point on the Colorado river in the southeastern part of the State of California, a distance of six hundred and thirty-five and eighty-seven one-hundredths miles as near as may be; also a line of railroad from a point at or near Tahachapa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river, a distance of three hundred and fifty-six and seven tenths miles, as near as may be; also a line of railroad from the town of Gilroy in the county of Santa Clara in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City in said last-named county, a distance of thirty-five and one-tenth miles as near as may be, and also such branches to said

lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established.

And also from a point on said road aforesaid at or near Salinas City in the county of Monterey southerly to a point in Kern county south of Tulare Lake intersecting the San Joaquin division of the said Southern Pacific Railroad; also from a point on the above described line at or near San Miguel in San Luis Obispo county, thence in a southerly direction to a point of intersection in Los Angeles county with the line of the said Southern Pacific Railroad running from Tahachapa Pass by way of Los Angeles to Fort Yuma, said roads passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles, and said roads in the aggregate being, as near as may be, four hundred and two miles in length; also from a point in the city of Los Angeles in the county of Los Angeles, State of California, to a point on or near the bay of San Pedro in said county, a distance of twenty and one-half miles. The aggregate length of all of said railroads being one thousand four hundred and forty-nine and fifty-four one-hundredths miles.

Article Third. The board of directors of said new corporation shall consist of seven persons, and the following named persons shall act as such directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation hereafter to be adopted, viz., Charles Crocker, David D. Colton, E. H. Miller, Jr., Robert Robinson, Nicholas T. Smith, Stephen T. Gage, and Joseph L. Willcutt.

Article Fourth. The capital stock of said new corporation shall be ninety millions dollars divided into nine hundred thousand shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

Article Fifth. Each stockholder of each of said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor where the same has been fully paid up, upon the surrender of the certificates now held by him and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

Article Sixth. And the several parties of the first and second parts each for itself hereby sells, assigns, transfers, grants, bargains, releases, and conveys to the said new and consolidated company and corporation its successors and assigns forever, all its property, real, personal and mixed of every kind and description; all its capital stock; all its interest in the shares of its capital

stock, subscribed but not fully paid up; all credits, effects, judgments, decrees, contracts, agreements, claims, dues and demands of every kind and description, and all rights, privileges and franchises, corporate and otherwise, held, owned, or claimed by said parties of the first and second parts or either of them, in possession or expectancy, either at law or in equity, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, claims and charges thereon, or in any wise affecting the same.

Article Seventh. The said new and consolidated company and corporation is to be liable for and shall fulfill, perform, do and pay all and each of the contracts and agreements, covenants, duties, obligations, liabilities, debts, dues and demands of the said several parties of the first and second parts; but this amalgamation and consolidation shall not in any way relieve the said parties of the first and second parts or the stockholders thereof from any and all just liabilities.

In testimony whereof, the said party of the first part has caused this instrument to be signed by its president and secretary and its corporate seal to be hereunto affixed, and the said party of the second part has caused this instrument to be signed by its president and secretary and its corporate seal hereunto affixed in pursuance of orders and resolutions of their several boards of direc-

tors made on the seventeenth day of December, A. D. 1874.

SOUTHERN PACIFIC RAILROAD COMPANY,

By Chas. Crocker,
President.

J. L. Willcutt,
Secretary.

[Corporate Seal.]

LOS ANGELES & SAN PEDRO RAILROAD COMPANY,

By Leland Stanford,
President.

J. L. Willcutt,
Secretary.

[Corporate Seal.]

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Railroad Company, party of the first part to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation and to the said new articles of association this seventeenth day of December, A. D. 1874.

CHAS. CROCKER,
S. T. GAGE,
N. T. SMITH,
DAVID D. COLTON,
E. H. MILLER, Jr.,
J. L. WILLCUTT,
ROBERT ROBINSON,
MARK HOPKINS,
LELAND STANFORD,
C. P. HUNTINGTON,
By Mark Hopkins,
Attorney in fact.
CONTRACT & FINANCE CO.,
By Jno. Miller,
Secretary.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stock holders in interest of the said Los Angeles & San Pedro Railroad Company, party of the second part, to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts

hereby consent to such amalgamation and consolidation and to the said new articles of association this seventeenth day of December, A. D. 1874.

LELAND STANFORD,
CHAS. CROCKER,
DAVID D. COLTON,
MARK HOPKINS,
C. P. HUNTINGTON,
By Mark Hopkins,
Attorney in fact.
ROBERT ROBINSON,
J. L. WILLCUTT,
CONTRACT & FINANCE CO.,
By Jno. Miller,
Secretary.

State of California—Department of State.

I, E. G. Waite, secretary of state, of the State of California, do hereby certify, that I have carefully compared the annexed copy of articles of association, amalgamation and consolidation of Southern Pacific R. R. Co. and Los Angeles & San Pedro R. R. Co. with the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form, and by the proper officer.

Witness my hand, and the Great Seal of State, at office, Sacramento, California, the twenty-third day of April, A. D. 1894.

E. G. WAITE,
[Seal] Secretary of State.

[Endorsed]: Articles of association, amalgamation and consolidation of the Southern Pacific Railroad Company and Los Angeles & San Pedro Railroad Company.

[Endorsed]: Filed in the office of the Secretary of State, Dec. 18, 1874. Drury Melone, Secretary of State, by N. S. White. Recorded Book 9, page 354. Department of State, California.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 587. Plaintiffs' Exhibit No. 12. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiffs' Exhibit No. 4. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 5.

Articles of association, incorporation, amalgamation and consolidation of the Southern Pacific Railroad Company, The San Jose & Almaden Railroad Company, The Pajaro & Santa Cruz Railroad Company, The Monterey Railroad Company, The Monterey Extension Railroad Company, The Southern Pacific Branch Railway Company, The San Pablo & Tulare Railroad Company, The San Pablo & Tulare Extension Railroad Company, The San Ramon Valley Railroad Company, The Stockton & Copperopolis Railroad Company, The Stockton & Tulare Railroad Company, The San Joaquin Valley & Yosemite Railroad Company, The Los Angeles & San

Diego Railroad Company, The Los Angeles & Independence Railroad Company, The Long Beach, Whittier & Los Angeles County Railroad Company, The Long Beach Railroad Company, The Southern Pacific Railroad Extension Company, and The Ramona & San Bernardino Railroad Company.

Articles of association, incorporation, amalgamation and consolidation made and executed on the fourth (4) day of May, 1888, by and between the Southern Pacific Railroad Company, party of the first part; the San Jose & Almaden Railroad Company, party of the second part; the Pajaro & Santa Cruz Railroad Company, party of the third part; The Monterey Railroad Company, party of the fourth part; the Monterey Extension Railroad Company, party of the fifth part; The Southern Pacific Branch Railway Company, party of the sixth part; The San Pablo & Tulare Railroad Company, party of the seventh part; The San Pablo & Tulare Extension Railroad Company, party of the eighth part; The San Ramon Valley Railroad Company, party of the ninth part; The Stockton & Copperopolis Railroad Company, party of the tenth part; The Stockton & Tulare Railroad Company, party of the eleventh part; The San Joaquin Valley & Yosemite Railroad Company, party of the twelfth part; The Los Angeles & San Diego Railroad Company, party of the thirteenth part; The Los Angeles & Independence Railroad Company, party of the fourteenth part; The Long Beach, Whittier & Los Angeles County Railroad Company, party of the fifteenth part; The Long Beach Railroad Company, party of the sixteenth part; The Southern Pacific Rail-

road Extension Company, party of the seventeenth part, and The Ramona & San Bernardino Railroad Company, party of the eighteenth part.

Witnesseth, that, whereas, the party of the first part, the Southern Pacific Railroad Company, is the owner of a line of railroad and franchises commencing in the city and county of San Francisco, in the State of California, and running thence through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, and San Bernardino and San Diego, to some point on the Colorado river in the southeastern part of the State of California, a distance of six hundred and thirty-five and eighty-seven one-hundredths miles as near as may be; also, a line of railroad from a point at or near Tehachapi Pass by way of Los Angeles to the Texas & Pacific Railroad at or near the Colorado river, a distance of three hundred and fifty-six and seven-tenths miles, as near as may be; also, a line of railroad from the town of Gilroy in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City in said last named county, a distance of thirty-five and one-tenth miles, as near as may be; and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established; and also from a point on said road aforesaid at or near Salinas City in the county of Monterey, southerly to a point in Kern county south of Tulare Lake, intersecting the San Joaquin division of the said Southern Pacific Railroad; also, from the above described line at or near San Miguel in

San Luis Obispo county, thence in a southerly direction to a point of intersection in Los Angeles county with the line of the said Southern Pacific Railroad running from Tehachapi Pass by way of Los Angeles to Fort Yuma; said roads passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles and said roads in the aggregate being, as near as may be, four hundred and two miles in length; also, from a point in the city of Los Angeles to a point on or near the bay of San Pedro in said county, a distance of twenty-four and sixty-five one-hundredths (24.65) miles; the aggregate length of all of said railroads being one thousand four hundred and fifty-four and thirty-two one-hundredths miles.

And, whereas, the party of the second part, the San Jose & Almaden Railroad Company, is the owner of a line of railroad commencing at or near Hillsdale on the line of the Southern Pacific Railroad and running thence southerly and southeasterly to a point at or near the town of New Almaden, all in the county of Santa Clara, a distance of 7.8 miles, more or less.

And whereas, the party of the third part, the Pajaro & Santa Cruz Railroad Company, is the owner of a line of railroad commencing at or near the town of Pajaro in the county of Monterey and running thence in a general northerly and northwesterly direction to a point at or near the town of Santa Cruz in the county of Santa Cruz, a distance of 21.2 miles, more or less; also commencing at or near Aptos in said county of Santa Cruz and running thence northerly and northeasterly for a

distance of five miles more or less. The estimated length of said railroad and branch being 26.2 miles more or less.

And, whereas, the party of the fourth part, the Monterey Railroad Company, is the owner of a line of railroad commencing at or near Castroville station in the county of Monterey, there connecting with the Southern Pacific Railroad and running thence in a general southwesterly direction to a point at or near Monterey in said county, a distance of fifteen and twelve hundredths miles, more or less.

And, whereas, the party of the fifth part, the Monterey Extension Railroad Company, was heretofore, to-wit, on the fifth day of January, 1888, duly incorporated and organized under the laws of the State of California, for the purpose of purchasing, constructing, owning, maintaining, and operating a line of railroad commencing at or near the city of Monterey there connecting with the Monterey Railroad, and running thence in a general northwesterly direction to a point at or near Pacific Grove Retreat, thence in a general southwesterly direction to a point at or near the mouth of the Carmel river, all in the county of Monterey, a distance of sixteen miles, more or less.

And, whereas, the party of the sixth part, the Southern Pacific Branch Railway Company, was heretofore, to-wit, on the tenth day of April, 1886, duly incorporated and organized under the laws of the State of California for the purpose of owning, constructing, maintaining and operating a line of steam railroad in the counties of San Luis Obispo, Santa Barbara, Ventura and Los An-

geles, commencing at a point at or near San Miguel in the county of San Luis Obispo, there connecting with the Southern Pacific Railroad and running thence in a general southeasterly direction through and into the aforesaid counties to a connection with said Southern Pacific Railroad at or near Saugus in Los Angeles county, a distance of two hundred and fifty miles, more or less.

And, whereas, the party of the seventh part, the San Pablo & Tulare Railroad Company, is the owner of a line of railroad, commencing at or near the town of Martinez in the county of Contra Costa and running thence in a general southeasterly direction through the county of Alameda to a point at or near the town of Tracy in the county of San Joaquin, a distance of 47.58 miles more or less.

And, whereas, the party of the eighth part, the San Pablo & Tulare Extension Railroad Company, was heretofore, towit, on the fifth day of February, 1887, duly incorporated and organized under the laws of the State of California for the purpose of owning, constructing, maintaining and operating a line of steam railroad commencing at or near the town of Tracy in the county of San Joaquin, there connecting with the San Pablo & Tulare Railroad and running thence in a general southeasterly direction through the counties of San Joaquin, Stanislaus, Merced, Fresno and Tulare, to a connection with the Southern Pacific Railroad at or near Pampa in the county of Kern, a distance of two hundred and sixty miles, more or less.

And, whereas the party of the ninth part, the San Ramon Valley Railroad Company, was heretofore, towit,

on the twenty-third day of April, 1888, duly incorporated and organized under the laws of the State of California, for the purpose of owning, maintaining and operating a line of railroad commencing at a point on the line of the San Pablo & Tulare Railroad at or near Avon in the county of Contra Costa and running thence to a point on the Central Pacific Railroad at or near Pleasanton in the county of Alameda, a distance of thirty-five miles, more or less.

And, whereas, the party of the tenth part, the Stockton & Copperopolis Railroad Company, is the owner of a line of railroad commencing at or near the town of Stockton in the county of San Joaquin and running thence in a general easterly direction to a point at or near Milton in the county of Calaveras; also, commencing at or near Peters in the county of San Joaquin and running thence southeasterly to a point at or near Oakdale in the county of Stanislaus, a distance of 44.37 miles more or less.

And, whereas, the party of the eleventh part, the Stockton & Tulare Railroad Company, was heretofore, to-wit, on the twenty-sixth day of November, 1887, duly incorporated and organized under the laws of the State of California for the purpose of constructing, owning maintaining and operating a line of steam railroad with branches thereto as follows: The main line of said railroad commencing at or near Oakdale in the county of Stanislaus, there connecting with the Stockton & Copperopolis Railroad and running thence in a general southeasterly direction through and into the county of Stanislaus, Merced, Fresno, and Tulare, there connecting with

the line of the Southern Pacific Railroad at or near the town of Poso in Kern County, a distance of two hundred miles, more or less; the branches to said road are as follows:

First. Commencing at or near the town of Modesto in the county of Stanislaus, there connecting with the Central Pacific Railroad and running thence in an easterly direction to a connection with the aforesaid main line, a distance of sixteen miles, more or less.

Second. Commencing at or ——— Merced in the county of Merced, there connecting with said Central Pacific Railroad and running thence easterly to a connection with the aforesaid main line, a distance of ten miles, more or less.

Third. Commencing at or near Sycamore in the county of Fresno, there connecting with the line of said Central Pacific Railroad and running thence easterly to a connection with aforesaid main line, a distance of ten miles, more or less.

Fourth. Commencing at or near Fresno in the county of Fresno, there connecting with the main line of said Central Pacific Railroad and running thence in a general easterly direction to a connection with the aforesaid main line, a distance of ten miles, more or less.

Fifth. Commencing at or near Tulare in the county of Tulare, there connecting with the line of the Southern Pacific Railroad, and running thence in a general easterly direction to a connection with aforesaid main line, a distance of sixteen miles, more or less.

Said main line and branches being two hundred and sixty-two miles in length, more or less.

And, whereas, the party of the twelfth part, the San Joaquin Valley & Yosemite Railroad Company, was heretofore, towit, on the twelfth day of February, 1886, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, maintaining and operating a line of railroad, commencing at a point on the line of the Southern Pacific Railroad at or near Berenda Station in Fresno county, and running thence northeasterly to a point at or near Perry's Ranch in said county, a distance of twenty-five miles, more or less.

And, whereas, the party of the thirteenth part, the Los Angeles & San Diego Railroad Company, was heretofore, towit, on the ninth day of October, 1876, duly incorporated and organized under the laws of the State of California for the purpose of constructing, owning, maintaining and operating a line of railroad and telegraph commencing at or near the city of Los Angeles in the county of Los Angeles and running thence in a southeasterly direction to the town of Anaheim in said county and thence in a southeasterly direction through said counties of Los Angeles & San Diego to a point at or near the city of San Diego in said last mentioned county, a distance of one hundred and forty miles, more or less.

And, whereas, the party of the fourteenth part, the Los Angeles & Independence Railroad Company, is the owner of a line of railroad, commencing at or near the city

of Los Angeles and running thence westerly to Santa Monica in said county, a distance of eighteen and fifty one-hundredths miles, more or less.

And, whereas, the party of the fifteenth part, the Long Beach, Whittier & Los Angeles County Railroad Company was heretofore, towit, on the fifteenth day of December, 1887, duly incorporated and organized under the laws of the State of California for the purpose of constructing, owning, maintaining and operating a line of railroad, commencing at or near Long Beach, in the county of Los Angeles, and running thence in a general northeasterly direction to Whittier, thence northwesterly to Ramona, a distance of thirty miles, more or less.

Also commencing at Los Angeles and running thence in an easterly direction to a point on the main line of the Southern Pacific Railroad between El Monte and Puente, and thence in a northeasterly direction to a point on or near San Dimos creek, a distance of thirty miles, more or less, all in said county of Los Angeles, and aggregating sixty miles in length, more or less.

And, whereas, the party of the sixteenth part, the Long Beach Railroad Company was heretofore, towit, on the twenty-eighth day of October, 1887, duly incorporated and organized under the laws of the State of California for the purpose of constructing, maintaining and operating a line of steam railroad in the county of Los Angeles, commencing at a point at or near Long Beach Junction on the line of the Los Angeles & San Pedro Railroad in said county, and running thence to the town of Long Beach, and thence in an easterly di-

rection to the boundary line between the Ranchos Los Cerritos and Los Alamitos, in said county, a distance of four miles, more or less.

And, whereas, the party of the seventeenth part, the Southern Pacific Railroad Extension Company was heretofore, towit, on the twentieth day of February, 1888, duly incorporated and organized under the laws of the State of California for the purpose of purchasing, constructing, owning, maintaining and operating a line of railroad commencing at the end of the constructed line of the Southern Pacific Railroad between the towns of Wilmington & San Pedro in the county of Los Angeles and running thence in a general southerly direction through said town of San Pedro to a point at or near Point Fermin, thence westerly through the lands of the San Pedro Harbor Dock & Land Association to the westerly boundary of said land, all in the county of Los Angeles and being five miles in length, more or less.

And, whereas, the party of the eighteenth part, the Ramona & San Bernardino Railroad Company, was heretofore, towit, on the twenty-fourth day of April, 1888, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning and operating a line of railroad at or near Ramona in Los Angeles county to a point at or near Crafton in the county of San Bernardino, a distance of 71 miles, more or less.

And, whereas, said parties, and all of them, now are and ever since their organization and incorporation have been railroad corporations duly and lawfully organized

and existing as such under the laws of the State of California, relating to the formation and existence of railroad corporations.

And, whereas, said respective parties believe that a consolidation and amalgamation of their capital stocks, their debts, properties, assets and franchises will be mutually advantageous.

And, whereas, the respective boards of directors of said corporations, parties hereto, have agreed upon the consolidation and amalgamation of said corporations, their debts, properties, assets and franchises in the following manner, towit:

First. That the said amalgamation and consolidation shall be made at once and that the name and style of the amalgamated and consolidated corporation shall be Southern Pacific Railroad Company.

That it shall continue in existence for a period of fifty years from the date of these articles.

Second. That the several capital stocks, debts, properties, assets and franchises, held, owned or possessed, by each of said corporations shall be vested in said amalgamated and consolidated corporation the Southern Pacific Railroad company as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all the conditions, stipulations, contracts, liens, claims and charges thereon and to all debts of said respective corporations.

Third. That the object, the purposes, the capital stock, the board of directors and the principal place of business shall be as expressed in the articles of incorporation hereinafter set out.

Fourth. That the stockholders of each of said corporation, parties hereto, shall have issued to them the same number of shares of the capital stock of the amalgamated and consolidated corporation as they own and hold of the capital stock of the respective corporations of which they are members and upon the same terms and conditions.

And, whereas, the holders of more than three-fourths in value of all the stock of each of said respective corporations, parties hereto, have given written consent to the amalgamation and consolidation of said corporations in the manner agreed upon as aforesaid by their respective boards of directors and for the purposes expressed in the articles of incorporation following:

Now, therefore, know all men by these presents, that the parties hereto, in pursuance of the laws of the State of California, in such cases made and provided, do hereby amalgamate and consolidate their capital stock, debts, properties, assets and franchises for the uses and purposes aforesaid, and do hereby vest the same in the said consolidated and amalgamated corporation, the Southern Pacific Railroad Company, and in pursuance of said consolidation and amalgamation, and in order *to* more fully to carry the same into force and effect, do hereby *adopy* the following articles of incorporation.

I.

The name of said amalgamated and consolidated corporation shall be Southern Pacific Railroad Company.

II.

The object and purpose of said amalgamated and consolidated corporation shall be to construct, own, operate and maintain lines of steam railroad and telegraph within the State of California and to carry passengers and freights on and over said lines of railroad for hire.

III.

The kinds of railroads to be owned and operated are single or double-track steam railroads having either a standard gauge or narrow gauge.

IV.

The places to and from which said lines of railroad are to run as follows:

First. Commencing at the city and county of San Francisco, in the State of California, and running thence through the city and county of San Francisco, the counties of San Mateo, Santa Clara, San Benito, Monterey, Fresno, Tulare, Kern and San Bernardino by way of Mojave to Needles on the Colorado river in the county of San Bernardino, State of California, a distance of six hundred and thirty-five and eighty-seven one-hundredths miles, as near as may be.

Also a line of railroad from a point at or near Tehachapi Pass by way of Los Angeles to Yuma in the county of San Diego, a distance of three hundred and fifty-six and seven-tenths miles, as near as may be; also a line of railroad from the town of Gilroy in the county of Santa Clara in said State, passing through said county and the counties of Santa Cruz, San Benito and Monterey

to a point at or near Salinas City in said last named county, a distance of thirty-five and one-tenth miles, as near as may be; and also from a point on said road aforesaid, at or near Salinas City, in the county of Monterey, southerly to a point in Kern county south of Tulare Lake, intersecting the San Joaquin division of the said Southern Pacific Railroad, said road passing into or through the counties of Monterey, San Luis Obispo and Kern, and being as near as may be, two hundred miles in length; also commencing at or near Hillsdale, in Santa Clara county, and running thence to a point at or near New Almaden in Santa Clara county, a distance of 7.8 miles, more or less; the aggregate length of all of said railroads being one thousand two hundred and thirty-five and forty-seven one-hundredths miles.

Second. Commencing at or near San Miguel in the county of San Luis Obispo and running thence southerly through the counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to a point at or near Saugus, in Los Angeles county, on the line of the Southern Pacific Railroad, a distance of two hundred and fifty miles, more or less.

Also, commencing at or near Castroville in Monterey county, and running thence southwesterly to a point at or near Monterey, thence northeasterly to Pacific Grove Retreat, and thence southwesterly to a point at or near the mouth of the Carmel river, a distance of 31.12 miles, more or less, and all in the county of Monterey.

Also, commencing at or near Pajaro in Monterey county, and running thence northerly and northwesterly

to a point at or near Santa Cruz in Santa Cruz county, a distance of 21.2 miles, more or less.

Also, commencing at or near Aptos in Santa Cruz county, and running thence northerly and northeasterly to a point at or near Loma Prieta in the same county, a distance of five miles, more or less, aggregating 307.32 miles, more or less.

Third. Commencing at or near Martinez in Contra Costa county and running easterly and southeasterly through the county of Alameda, via Antioch, to a point at or near Tracy in San Joaquin county, and thence in a general southeasterly direction through the counties of San Joaquin, Stanislaus, Merced, Fresno and Tulare, to a connection with the Southern Pacific Railroad at or near Pampa in the county of Kern, a distance of 307.58 miles, more or less.

Fourth. Commencing at or near the city of Stockton and running thence easterly and northeasterly to or near Milton in the county of Calaveras, a distance of 25.68 miles, more or less.

Also commencing at or near Peters in the county of San Joaquin, and running thence in a southeasterly direction through the counties of Stanislaus, Merced, Fresno, Tulare, to a connection with the Southern Pacific Railroad at or near Poso, in Kern county, a distance of 218.69 miles, more or less, with a branch from said last mentioned line westerly to or near Modesto in Stanislaus county, a distance of about sixteen miles, a branch westerly to a point on Central Pacific Railroad at or near Merced in Merced county, a distance of about ten miles;

a branch westerly to a connection with the Central Pacific Railroad at or near Sycamore in Fresno county, a distance of about ten miles; a branch westerly to a connection with the Central Pacific Railroad at or near Fresno, in Fresno county, a distance of about ten miles, and a branch westerly to a connection with the Southern Pacific Railroad at or near Tulare in Tulare county, a distance of about fifteen miles, aggregating in all 306.37 miles, more or less.

Fifth. Commencing at or near Berenda, in the county of Fresno, running thence northeasterly to a point at or near Perry's ranch in said county, a distance of twenty-five miles, more or less.

Sixth. Commencing at or near Los Angeles, in the county of Los Angeles, and running thence southeasterly to Anaheim and Santa Ana in said county, and thence southeasterly through the counties of Los Angeles and San Diego to a point at or near the city of San Diego, a distance of 140 miles, more or less.

Seventh. Commencing at or near Los Angeles, in the county of Los Angeles, and running thence northwesterly to Santa Monica, a distance of 18.50 miles more or less.

Eighth. Commencing at or near Los Angeles, in the county of Los Angeles, and running thence southwesterly to San Pedro, thence to a point at or near Point Fermin, thence westerly through the lands of the San Pedro Harbor, Dock & Land Association to a point at or near the westerly boundary of said lands, all in said county of Los Angeles and being 29.65 miles in length, more or less.

Ninth. Commencing at or near Long Beach in the county of Los Angeles, and running thence in a general northeasterly direction to Whittier, thence northwesterly to a point at or near Ramona. Also commencing at or near Los Angeles, running thence easterly to a point on the main line of the Southern Pacific Railroad between El Monte and Puente, and thence in a northeasterly direction to a point on or near San Dimos creek; all in said county of Los Angeles and being sixty miles in length, more or less.

Tenth. Commencing at or near Long Beach Junction in the county of Los Angeles, and running thence to the town of Long Beach, and thence in an easterly direction to the boundary line between the Rancho Los Cerritos and Rancho Los Alamitos in the county of Los Angeles, a distance of four miles, more or less.

Eleventh. Commencing at or near Ramona in Los Angeles county, and running thence to a point at or near Crafton in the county of San Bernardino, a distance of seventy-one miles more or less.

Twelfth. Commencing at a point on the line of the San Pablo & Tulare Railroad at or near Avon, in the county of Contra Costa, and running thence to a point on the Central Pacific Railroad, at or near Pleasanton in the county of Alameda, a distance of thirty-five miles, more or less.

Said lines of railroad lying all within the State of California and being composed of the lines of the several railroads hereinbefore mentioned and described. Together with such other and further appendages and ad-

junctions including branches and spur tracks in the counties hereinbefore named or in one or more thereof as the board of directors of said consolidated and amalgamated company may direct from time to time.

V.

The estimated length of said railroad and its branches in the aggregate is two thousand five hundred and thirty-nine and eighty-nine one-hundredths (2539.89) miles, as near as may be.

VI.

The place where the principal business of said corporation is to be transacted is the city and county of San Francisco, State of California.

VII.

The term for which said corporation is to exist is fifty years from the date hereof.

VIII.

The number of directors of said corporation is to be seven and the names and residence of those appointed for the first year are as follows:

Names.	Residence.
CHAS. F. CROCKER,	San Francisco, Cal.
TIMOTHY HOPKINS,	San Mateo, Cal.,
CHARLES MAYNE,	San Francisco, Cal.
W. V. HUNTINGTON,	San Francisco, Cal.
N. T. SMITH,	San Francisco, Cal.
J. L. WILLCUTT,	Oakland, Cal.
A. N. TOWNE,	San Francisco, Cal.

IX.

The capital stock of said corporation is to be one hundred and forty-two million nine hundred and ninety thousand ($142,990,000) dollars, divided into one million, four hundred and twenty-nine thousand, nine hundred (1,429,900) shares, of the par value of one hundred dollars each.

X.

The amount of the capital stock actually subscribed in each of the said corporations, parties hereto at the time of their formation, and the names of the persons by whom the same was subscribed and the number of shares subscribed to, and then held by each, was as set out in the original articles of incorporation of the several companies, now consolidated and amalgamated, and the same was, and now is more than one thousand dollars per mile for each mile of each of said roads.

XI.

That of the capital stock of each of said corporations there had at the time of their formation (where the same was required by law) been actually paid to the respective treasurers thereof, the amounts specified in their original articles of incorporation, verified by the affidavits attached to the copies thereof, filed in the office of the secretary of state, of the State of California, and the amount so paid in were in each case ten per cent of the subscribed capital stock.

In witness whereof, the said parties have caused these presents to be signed by their respective presidents or vice-presidents and secretaries, and their corporate seals

to be hereunto affixed, pursuant to resolutions of their respective boards of directors, this fourth (4th) day of May, A. D. 1888.

CHAS. CROCKER,
President, Southern Pacific Railroad Company.

J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

[Seal]

CHAS. F. CROCKER,
President, San Jose & Almaden Railroad Company.

J. L. WILLCUTT,
Secretary San Jose & Almaden Railroad Company.

[Seal]

CHAS. F. CROCKER,
President Pajaro & Santa Cruz Railroad Company.

J. L. WILLCUTT,
Secretary Pajaro & Santa Cruz Railroad Company.

[Seal]

CHAS. CROCKER,
President, Monterey Railroad Company.

J. L. WILLCUTT,
Secretary Monterey Railroad Company.

[Seal]

CHAS. F. CROCKER,
President, Monterey Extension Railroad Company.

J. L. WILLCUTT,
Secretary Monterey Extension Railroad Company.

[Seal]

CHAS. F. CROCKER,

President, Southern Pacific Branch Railway Company.

J. L. WILLCUTT,

Secretary Southern Pacific Branch Railway Company.

[Seal]

CHAS. CROCKER,

Vice-President San Pablo & Tulare Railroad Company.

W. V. HUNTINGTON,

Secretary, San Pablo & Tulare Railroad Company.

[Seal]

CHAS. F. CROCKER,

President, San Pablo & Tulare Extension Railroad Company.

W. V. HUNTINGTON,

Secretary, San Pablo & Tulare Extension Railroad Company.

[Seal]

JAS. P. BROWN,

President, San Ramon Valley Railroad Company.

D. D. STUBBS,

Secretary, San Ramon Valley Railroad Company.

[Seal]

CHAS. F. CROCKER,

Vice-president Stockton & Copperopolis Railroad Company.

W. V. HUNTINGTON,

Secretary, Stockton & Copperopolis Railroad Company.

[Seal]

CHAS. F. CROCKER,

Vice-president Stockton & Tulare Railroad Company.

W. V. HUNTINGTON,
Secretary, Stockton & Tulare Railroad Company.
[Seal]

CHAS. F. CROCKER,
President, San Joaquin Valley & Yosemite Railroad Company.

W. V. HUNTINGTON,
Secretary San Joaquin Valley & Yosemite Railroad Company.
[Seal]

CHAS. F. CROCKER,
President Los Angeles & San Diego Railroad Company.

J. L. WILLCUTT,
Secretary, Los Angeles & San Diego Railroad Company.
[Seal]

CHAS. F. CROCKER,
President, Los Angeles & Independence Railroad Company.
[Seal]

F. S. DOUTY,
Secretary, Los Angeles & Independence Railroad Company.
[Seal]

CHAS. F. CROCKER,
President Long Beach, Whittier & Los Angeles County Railroad Company.

W. V. HUNTINGTON,
Secretary, Long Beach, Whittier & Los Angeles County Railroad Company.
[Seal]

CHAS. F. CROCKER,
President, Long Beach Railroad Company.

F. S. DOUTY,
Secretary, Long Beach Railroad Company.

[Seal]

CHAS. CROCKER,
President, Southern Pacific Railroad Extension Railroad Company.

J. L. WILLCUTT,
Secretary, Southern Pacific Railroad Extension Company.

[Seal]

G. L. LANSING,
President, Ramona & San Bernardino Railroad Company.

C. E. GREEN,
Secretary Ramona & San Bernardino Railroad Company.

[Seal]

City and County of San Francisco, } ss.
State of California, }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared, Charles Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Southern Pacific Railroad Company, that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and

affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco, } ss.
State of California, }

On this the fourth (4th) day of May, in the year one thousand and eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the San Jose & Almaden Railroad Company, that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco. } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me,

E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary of the Pajaro & Santa Cruz Railroad Company, that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco. } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Monterey Railroad Company, that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and

affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco. } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Monterey Extension Railroad Company, that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco. } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me,

E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Southern Pacific Branch Railway Company, that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco. } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the vice-president, and W. V. Huntington, known to me to be the secretary, of the San Pablo & Tulare Railroad Company, that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and

affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco. } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-three, before me, E.R. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and W. V. Huntington, known to me to be the secretary of the San Pablo & Tulare Extension Railroad Company that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary Public in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco, } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E.

B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Jas. P. Brown, known to me to be the president, and D. D. Stubbs, known to me to be the secretary, of the San Ramon Valley Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco, } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the vice-president, and W. V. Huntington, known to me to be the secretary, of the Stockton & Copperopolis Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the vice-president, and W. V. Huntington, known to me to be the secretary, of the Stockton & Tulare Railroad Company, that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

State of California. } ss.
City and County of San Francisco, }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E.

B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and W. V. Huntington, known to me to be the secretary, of the San Joaquin Valley & Yosemite Railroad Company, that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco. } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Los Angeles & San Diego Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and

affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco, } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and F. S. Douty, known to me to be the secretary, of the Los Angeles & Independence Railroad Company, that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco, } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E.

B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and W. V. Huntington, known to me to be the secretary, of the Long Beach, Whittier & Los Angeles County Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco, } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president, and F. S. Douty, known to me to be the secretary, of the Long Beach Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco, } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary, of the Southern Pacific Railroad Extension Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

City and County of San Francisco, } ss.
State of California. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, duly commissioned and qualified, personally appeared G. L. Lansing, known to me to be the president, and Chas. T. Green, known to me to be the secretary, of the Ramona & San Bernardino Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. B. RYAN,

Notary public, in and for the city and county of San Francisco, State of California.

[Notarial Seal]

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Southern Pacific Railroad Company, party of the first part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe

to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER,
W. V. HUNTINGTON,
J. L. WILLCUTT,
C. P. HUNTINGTON,
TIMOTHY HOPKINS,
CHAS. CROCKER,
A. N. TOWNE,
[S. P. Co. Seal] SOUTHERN PACIFIC COMPANY,
By G. L. Lansing, Secretary.
N. T. SMITH,
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. Douty, Secretary.
LELAND STANFORD,
By Ariel Lathrop, attorney in fact.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Jose & Almaden Railroad Company, party of the second part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe

to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER,
J. L. WILLCUTT,
N. T. SMITH,
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. Douty, Secretary.
ARIEL LATHROP,
A. C. BASSETT.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Pajaro & Santa Cruz Railroad Company, party of the third part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER,
N. T. SMITH,
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. Douty, Secretary.
A. C. BASSETT,
TIMOTHY HOPKINS,
J. L. WILLCUTT,
C. E. GREEN,
S. T. GAGE,
CREED HAYMOND.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Monterey Railroad Company, party of the fourth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER,
W. V. HUNTINGTON,
J. L. WILLCUTT,
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. Douty, Secretary.
C. P. HUNTINGTON,
TIMOTHY HOPKINS,
CHAS. CROCKER,
N. T. SMITH,
LELAND STANFORD,
By Ariel Lathrop, attorney in fact.
MRS. M. F. S. SEARLES,
By Timothy Hopkins, attorney in fact.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Monterey Extension Railroad Company, party of the fifth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto,

and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER,
W. V. HUNTINGTON,
TIMOTHY HOPKINS,
CHAS. CROCKER,
N. T. SMITH,

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Southern Pacific Branch Railway Company, party of the sixth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER,
W. V. HUNTINGTON,
W. E. BROWN,
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. Douty, Secretary.
TIMOTHY HOPKINS.
J. L. WILLCUTT,
N. T. SMITH,
S. T GAGE.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Pablo & Tulare Railroad Company, party of the seventh part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

[W. D. Co. Seal] WESTERN DEVELOPMENT CO.,
By F. S. Douty, President.
CHAS. F. CROCKER,
TIMOTHY HOPKINS,
C. P. HUNTINGTON,
LELAND STANFORD,
By Ariel Lathrop, attorney in fact.
W. V. HUNTINGTON,
CHAS. CROCKER.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Pablo & Tulare Extension Railroad Company, party of the eighth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, sub-

scribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER,
TIMOTHY HOPKINS,
W. V. HUNTINGTON,
W. E. BROWN,
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. Douty, Secretary.
C. E. GREEN.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Ramon Valley Railroad Company, party of the ninth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

A. J. TREAT,
G. L. LANSING,
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. Douty, Secretary.
D. D. STUBBS,
JAS. P. BROWN,
W. L. BROWN.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Stockton & Copperopolis Railroad Company, party of the tenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

W. E. BROWN,
CHAS. F. CROCKER,
TIMOTHY HOPKINS,
C. P. HUNTINGTON,
W. V. HUNTINGTON,
E. H. PARDEE,
N. T. SMITH,
LELAND STANFORD,
By Ariel Lathrop, Attorney in fact.
MRS. M. F. SEARLES,
By Timothy Hopkins, Attorney in fact.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Stockton & Tulare Railroad Company, party of the eleventh part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe

to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

W. E. BROWN,
LELAND STANFORD,
By Ariel Lathrop, Attorney in fact.
CHAS. F. CROCKER,
TIMOTHY HOPKINS,
W. V. HUNTINGTON,
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.
By F. S. Douty, Secretary.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Joaquin Valley & Yosemite Railroad Company, party of the twelfth part to the foregoing articles of amalgamation and consolidation, did prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER,
TIMOTHY HOPKINS,
W. V. HUNTINGTON,
S. T. GAGE,
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. Douty, Secretary.
C. E. GREEN.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Los Angeles & San Diego Railroad Company, party of the thirteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

[W. D. Co. Seal] WESTERN DEVELOPMENT CO.,
By F. S. Douty, President.
C. P. HUNTINGTON,
TIMOTHY HOPKINS,
CHAS. CROCKER,
J. L. WILLCUTT,
N. T. SMITH,
LELAND STANFORD,
By Ariel Lathrop, Attorney in fact.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Los Angeles & Independence Railroad Company, party of the fourteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders,

subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

[W. D. Co. Seal] WESTERN DEVELOPMENT CO.,
By F. S. Duty, President.
C. P. HUNTINGTON,
W. V. HUNTINGTON,
TIMOTHY HOPKINS,
F. S. DOUTY,
CHAS. CROCKER,
LELAND STANFORD,
By Ariel Lathrop, Attorney in fact.
CHAS. F. CROCKER,

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Long Beach, Whittier & Los Angeles County Railroad Company, party of the fifteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

LELAND STANFORD,
By Ariel Lathrop, Attorney in fact.
CHAS. F. CROCKER,
W. V. HUNTINGTON,
TIMOTHY HOPKINS,
W. E. BROWN,
[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. Douty, Secretary.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Long Beach Railroad Company, party of the sixteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. Duty, Secretary.

F. S. DOUTY,
TIMOTHY HOPKINS,
W. E. BROWN,
C. E. GREEN,
CHAS. F. CROCKER.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Southern Pacific Railroad Extension Company, party of the seventeenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, sub-

scribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

[P. I. Co. Seal] PACIFIC IMPROVEMENT CO.,
By F. S. Duty, Secretary.
TIMOTHY HOPKINS,
W. V. HUNTINGTON,
CHAS. CROCKER,
W. E. BROWN,
LELAND STANFORD,
By Ariel Lathrop, Attorney in fact.

This is to certify, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Ramona & San Bernardino Railroad Company, party of the eighteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto and that we do hereby, as such stockholders, subscribe to the foregoing articles of association incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

G. L. LANSING,
C. E. GREEN,
JAS. P. BROWN,
CHAS. G. LATHROP,
FREDK. MADGE.

City and County of San Francisco, } ss.
State of California. }

I, Wm. J. Ruddick, county clerk of the city and county of San Francisco, State of California, hereby certify th foregoing to be a full, true and correct copy of the original articles of association, incorporation, amalgamation and consolidation of the Southern Pacific Railroad Company, with the San Jose & Almaden and sixteen other railroad companies, filed in my office on the twelfth (12th) day of May, A. D. 1888.

Attest my hand and my official seal this twelfth day of May, A. D. 1888.

WM. J. RUDDICK,
County Clerk.
By Wm. A. Davies,
Deputy County Clerk.

[Seal.]

State of California—Department of State.

I. E. G. Waite, secretary of state of the State of California, do hereby certify that I have carefully compared the annexed copy of articles of association, incorporation, amalgamation and consolidation of the Southern Pacific Railroad Company with the San Jose & Almaden and sixteen other railroad companies with the certified copy of the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the twenty-fourth day of April, A. D. 1894.

E. G. WAITE,
Secretary of State.
By Wm. H. Stevens,
Deputy.

[Seal.]

[Endorsed]: Articles of association, incorporation, amalgamation and consolidation of the Southern Pacific Railroad Company with the San Jose & Almaden and sixteen other railroad companies. Dated May 4, 1888.

[Endorsed]: Filed in the office of the County Clerk of the city and county of San Francisco, State of California, this twelfth day of May, A. D. 1888. Wm. J. Ruddick, County Clerk, by Wm. A. Davies, deputy clerk. Department of State, California. Filed in the office of the secretary of state the fourteenth day of May, A. D. 1888. W. C. Hendricks, Secretary of State, by H. B. Davies, deputy. Record book 65, page 90.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 587. Plaintiffs' Exhibit No. 13. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiffs' Exhibit No. 5. Leo Longley, special examiner. Filed November 19, 1895. William M. Van Dyke, clerk.

State of California—Department of State.

[Engraving.] I, H. L. Nichols, secretary of state of the State of California, do hereby certify that the annexed is a true, full and correct copy of articles of association of the Southern Pacific Railroad Company, now on file in my office.

Witness my hand and the Great Seal of State, at office, in Sacramento, California, the twenty-first day of December, A. D. 1868.

H. L. NICHOLS,
Secretary of State.
Lew B. Harris,
Deputy.

[Seal.]

Plaintiff's Exhibit No. 6.

Southern Pacific Railroad Company.

Articles of Association.

Know all men by these presents, that we, the undersigned, being subscribers to the stock of a contemplated railroad from some point on the bay of San Francisco in the State of California, through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego, to the town of San Diego, in said State, thence eastward through the said county of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad from said eastern line of the State of California to the Mississippi river; which stock subscribed by us amounts to at least one thousand dollars for each and every mile of said proposed railroad, and of which ten per cent in cash has been actu-

ally and in good faith paid thereon to B. W. Hathaway, one of our number, who has been by us appointed temporary treasurer; and being desirous of forming *of forming* a corporation, do hereby, at a regular meeting of said stockholders, held pursuant to due notice thereof in writing given by said treasurer, adopt the following:

Articles of Association.

Article 1. We, the undersigned, whose names are hereto subscribed, do hereby organize, form and become a corporation and body politic, under and in pursuance of an act of the legislature of the State of California, entitled "An act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto," approved May 20, A. D. 1861, and the several acts supplementary to and amendatory thereof, for the purpose of constructing, owning and maintaining a railroad from some point on the bay of San Francisco in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego to the town of San Diego in said State, thence eastward through the said county of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad from said eastern line of the State of California to the Mississippi river.

Article 2. The name of the corporation hereby formed and organized shall be "Southern Pacific Railroad Company," and the same shall continue in existence for the term of fifty years from the date hereof.

Article 3. The length of said proposed railroad, as near as may be is seven hundred and twenty miles.

Article 4. The capital stock of said corporation shall be, and is hereby fixed at thirty millions dollars, being the actual contemplated cost of constructing said railroad, together with the cost of the right of way, motive power, and every other appurtenance and thing necessary for the completion and running of said road, as near as can be estimated by competent engineers, and shall consist of, and be divided into three hundred thousand shares of one hundred dollars each.

Article 5. The number of directors to manage the affairs of said corporation shall be seven, and the names of the persons chosen to act as such directors, and to hold their offices until others are duly elected are T. G. Phelps, Chas. N. Fox, Benjamin Flint, C. I. Hutchinson, B. G. Lathrop, J. B. Cox, and B. W. Hathaway, all of whom are subscribers to these articles of association.

In testimony whereof we have hereunto severally subscribed our names, places of residence, and the number of said shares of stock held by each, this twenty-ninth day of November, 1865.

T. G. PHELPS, San Francisco, (720) Seven hundred & twenty.

CHAS. N. FOX, San Mateo, (720) Seven hundred & twenty.

BENJAMIN FLINT, San Juan, (720) Seven hundred & twenty.

C. I. HUTCHINSON, San Francisco, (720) Seven hundred & twenty.

B. G. LATHROP, San Mateo, (720) Seven hundred & twenty.

W. S. ROSECRANS, Cincinnati, O., (720) Seven hundred & twenty.

(By J. B. Cox, his atty. in fact.)

J. B. COX, San Francisco, (720) Seven hundred & twenty.

B. W. HATHAWAY, San Francisco, (720) Seven hundred & twenty.

JOHN F. SEARS, San Francisco, (720) Seven hundred & twenty.

WM. T. COLEMAN, San Francisco, (720) Seven hundred & twenty.

I. W. STEPHENSON, San Francisco, (720) Seven hundred and twenty.

City and County of San Francisco, }
State of California. } ss.

T. G. Phelps, Benjamin Flint, and B. W. Hathaway being duly sworn do depose and say that they are, and each of them is, a director of the Southern Pacific Railroad Company; that at least one thousand dollars for each and every mile of the railroad proposed and mentioned in the foregoing articles of association, towit, seven hundred and twenty thousand dollars, has actually and in good faith been subscribed to the capital stock of said company by the persons whose names appear subscribed to said articles of association, and that ten per cent on said amount so subscribed has actually and in good faith been paid to B. W. Hathaway, the treasurer named and appointed by said subscribers from among their number, and that the said subscribers are known to these depo-

nents, and to each of them, to be subscribers to said articles of association, and to be the persons so represented.

T. G. PHELPS,
BENJAMIN FLINT,
B. W. HATHAWAY.

[Seal]

[5 cent Int. Rev. Stamp cancelled.]

Subscribed and sworn to before me this twenty-ninth day of November, 1865.

GEO. C. WALLER,
Notary Public.

[Endorsed]: Southern Pacific Railroad Company. Articles of association. Filed in office of secretary of state Dec. 2, 1865. Fees $5.00, paid.

In the United States Circuit Court, Southern District of California.

I, Chas. L. Batcheller, master and examiner in chancery of the United States Circuit Court, Southern District of California, do hereby certify that the foregoing five pages, are a full, true and correct copy, being Master's Exhibit No. 195 in the case of the United States, complainant, vs. The Southern Pacific Railroad Company, defendant, No. 68, offered and filed in evidence before me on the twelfth day of April, A. D. 1890, and that I have carefully compared the same with the original.

Dated this twelfth day of April, A. D. 1890.

CHAS. L. BATCHELLER,
Master and examiner in chancery of said Court.

[Endorsements]: Southern Pacific Railroad Company. Articles of incorporation. Nov. 29, 1865. Certified copy filed December 2, 1865. Ex. No. 12 L. S. Defendants' Exhibit "2." Introduced in evidence August 14, 1884. C. S. M. United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 68. Master's Exhibit 195. Filed April 12, 1890. Chas. L. Batcheller, master and examiner in chancery. Plaintiffs' Exhibit No. 2. E. H. Lamme, examiner. Filed June 12, 1890. Wm. M. Van Dyke, Clerk. United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiffs' Exhibit No. 6. Leo Longley, special examiner. Filed Nov. 20, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 7.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY OF KENTUCKY, LEWIS H. BIXBY, H. J. PARKS, CLARA E. CUMBERLAND, THOMAS S. OLDHAM, O. MORGAN, THE POMONA LAND & WATER COMPANY, L. L. BRADBURY, H. M. CRAMPTON, CARLTON SEAVES, STODDARD JESS, ELIAS FINK, CHARLES N. PECK, S. W. MOORE, GEORGE D. RIPLEY, C. C. JOHNSON, WILLIAM S. HENDERSON, FRANK JOHNSON, GEORGE RHORES, CASSIE L. FOSS, and JOSEPH HINKELL,
Defendants.

Nos. 67, 68 & 69. Consolidated by order of Court.

Deposition of J. L. Willcutt.

(Clement Bennett, U. S. Official Reporter, 434 California Street.)

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY OF KENTUCKY, LEWIS H. BIXBY, H. J. PARKS, CLARA E. CUMBERLAND, THOMAS S. OLDHAM, O. MORGAN, THE POMONA LAND & WATER COMPANY, L. L. BRADBURY, H. M. CRAMPTON, CHARLES SEAVES, STODDARD JESS, ELIAS FINK, CHARLES N. PECK, S. W. MOORE, GEORGE D. RIPLEY, C. C. JOHNSON, WILLIAM S. HENDERSON, FRANK JOHNSON, GEORGE RHORES, CASSIE L. FOSS, and JOSEPH HINKELL, Defendants.

Nos. 67, 68 & 69. Consolidated by order of Court.

Wednesday, December 18, 1889.

Before Charles L. Batchelor, Master in Chancery.

J. L. WILLCUTT, first being duly sworn on behalf of the plaintiff, deposes and says:

MR. CALL.—Q. What is your occupation and residence?

A. Secretary of the Southern Pacific Railroad Company. Residence, Oakland.

Q. Have you been secretary of the Southern Pacific Railroad Company since the twelfth day of August, 1873?

A. Yes sir; I have.

Q. Will you state if you were secretary of any of the companies that have been amalgamated with the Southern Pacific Railroad Company; any of the companies named in the amalgamation of August 12, 1873,—the Southern Pacific Branch Railroad Company?

A. Yes; I was.

Q. The California Southern Railroad Company?

A. Yes, sir; I was secretary of that corporation.

Q. MR. REDDING.—The respondent, the Southern Pacific Railroad Company, waives the evidence deduced from the answer of Mr. Willcutt on the ground that the information is secondary, and will concede that he is stating facts from the record as if the record itself spoke.

MR. CALL.—Q. Can you tell us what was the capital stock authorized, of the Southern Pacific Branch Railroad Company on the twelfth day of August, 1875?

A. The capital stock I find to be twenty million dollars.

Q. Will you state what was the capital stock of the Southern Pacific Railroad Company prior to that amalgamation in August, 1873?

A. Seventy million dollars.

Q. State what was the capital stock of the Southern Pacific Railroad Company as amalgamated with the Southern Pacific Branch Railroad Company by the articles of August 12, 1873?

A. Ninety million dollars.

Q. It is stated in article 6 of the articles entitled "Article of amalgamation and consolidation," which is introduced in this case and marked Exhibit B, as follows: "And the said several parties of the first part and second parts each for itself hereby sells, assigns, transfers, grants, bargains, releases and conveys to the said new and consolidated company and corporation, its successors and assigns forever all its property, real, personal and mixed of every kind and description, all its capital stock, all its interest in the shares of its capital stock subscribed but not fully paid for, all credits, effects, judgments, decrees, contracts, agreements, claims, dues and demands of every kind and description and all releases, privileges, franchises corporate and otherwise held, owned, claimed by said parties of the first part and second parts or either of them in possession or expectancy either at law or in equity." Will you please state whether in carrying out this consolidation and amalgamation, any other or different assignment or deeds or transfers were made by either of the old companies to the new consolidated company which is there stated?

A. Not to my knowledge.

Q. Upon these articles referred to being executed, published and filed, how did you proceed to carry on the business of the company, with respect to the property of the Southern Pacific Branch Railroad Company and the Southern Pacific Railroad Company, as it existed prior to August 12, 1873?

A. Exactly as though it had always been the property of the Southern Pacific Railroad proper. It carried on the business of both companies under the one name.

Q. Did the Southern Pacific Branch Railroad Company as such carry on any railroad business or otherwise as an independent corporation after the consolidation of 1873, referred to? A. No, sir.

Q. Did the Southern Pacific Railroad Company, the party of the first part, to the agreement of August 12, 1873, referred to, being a corporation with a capital of seventy million dollars, carry on any railroad business or otherwise as such?

A. The business carried on continued in the name of the Southern Pacific Railroad Company. The amount of the capital stock not figuring in any of its transactions, conveyances, or otherwise. Everything was done in the name of the Southern Pacific Railroad Company.

Q. Did any company by the name of the Southern Pacific Railroad Company, having a capital of not more than seventy million dollars, do any railroad business or construct any railroad after the twelfth day of August, 1873?

A. No, sir. The corporations consolidated, after the date of the consolidation or practically did so they are not carrying on any business, it all being done under the name of the Southern Pacific Railroad Company.

Q. The companies or corporations which were parties to the contract entitled, "Articles of association, amalgamation and consolidation of October 12, 1870," which are referred to in the evidence before the Master as "Stipulated Exhibit A," were treated in the same way as being practically dead, or were they not. How were they treated?

A. As though they did not any longer exist with the exception of the Southern Pacific Railroad.

Q. Now, will you please state, in conducting the affairs of the amalgamated company of October 12, 1870, whether or not you carried on the keeping of the books, and all other matters as a single company, and assumed that the property of the various companied were merged into one?

A. They were. The property of the different companies were transferred to a new set of books.

Cross-Examination.

MR. REDDING—Q. I understand that on the eleventh day of October, 1870, the Southern Pacific Branch Railroad Company, the San Francisco and San Jose Railroad Company, The Santa Clara and Pajaro Valley Railroad Company, with the California Southern Railroad Company, were consolidated and amalgamated under the name of the Southern Pacific Railroad Company?

A. That is correct.

Q. Now, there was existing prior to the eleventh day of October, 1870, the corporation known as the Southern Pacific Railroad Company? A. Yes, sir.

Q. And subsequently to the eleventh day of October, 1870, there was existing a corporation known as the Southern Pacific Railroad Company?

A. Yes, sir.

Q. That received, and had in it, everything pertaining to the companies I have enumerated? A. Correct.

Q. To refresh your mind with reference to the date of several acts of Congress, you remember that on the twenty-seventh day of July, 1866, Congress passed an act

entitled "An act granting land to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast." That act of Congress contains what is known as the grant to the Southern Pacific Railroad Company of 1866. Have you made any reports to the interior department, or to the President of the United States, or to any person in authority with reference to the Southern Pacific Railroad Company, and that act of Congress, and the terms of that act of Congress? In other words, have any reports gone forth from this office to Washington?

Objected to as incompetent, immaterial and not best evidence.

A. I think various reports have gone forward. I shall have to refer to the files to answer you.

Q. There have been reports?

(Same objection.)

A. Yes, sir.

Q. Is there not what is known as the annual report which goes forth stating the condition of affairs of the company called for by this act of Congress?

(Same objection.)

A. For some years there was an annual report sent forward.

(Same objection.)

Q. That was sent forward by the Southern Pacific Railroad Company?

(Same objection.)

A. Yes, sir.

Q. Now on the twelfth of August, 1875, the Southern Pacific Railroad Company, which is the Southern

Pacific Railroad Company that received that land grant, and the Southern Pacific Branch Railroad Company amalgamated and consolidated. Do you know whether or not reports went to Congress, or to Washington, or to any person in authority after 1873, from this office with reference to the act of Congress of July 27, 1866, and also with reference to the act of Congress of March 3, 1871, which is known as the Southern Pacific Branch Line act from Tehachapa by way of Los Angeles, to Fort Yuma?

(Same objection.)

A. There were.

Q. For what years, and to whom were they sent?

(Same objection.)

A. From 1870, to June, 1877, to the secretary of the interior.

Q. Were they received by him?

(Same objection.)

A. They were sent on regularly to be filed.

MR. CALL.—I have no objection to the witness stating that they were received.

A. They were received at Washington.

MR. REDDING.—Q. What was the nature of these reports, and for what purpose were they sent?

(Same objection.)

A. It was the annual report of the company to the secretary of the interior as required by certain acts of Congress. They were all sworn statements.

Q. Have you been in constant communication with Washington and with the various authorities annually with reference to the affairs of the Southern Pacific Rail-

road Company since the date of these acts of Congress that I have mentioned?

(Same objection.)

A. I have.

Q. Please continue and state further to whom those reports were made and what the nature of them was?

(Same objection.)

A. I answered, to June 30, 1877, to the secretary of the interior. To 1879, to the United States auditor of railroads accounts. Subsequently to that date, to the commissioner of railroads, department of the interior.

Q. Have there been annual reports made?

A. There have been annual reports made.

Q. And accepted?

(Same objection.)

A. And accepted.

(Same objection.)

Q. Have those reports been made by the Southern Pacific Railroad Company?

(Same objection.)

A. They have.

Q. Why is it since 1878, you have made the annual reports to the commissioner of railroads?

(Objected to by plaintiff as incompetent, irrelevant, immaterial, and not cross-examination.)

A. Under the act of Congress, approved June 19, 1878, entitled, "An act to create an auditor of railroad accounts, and for other purposes."

Q. Section 4 of that act reads: "That each and every railroad company aforesaid, which has received from the

United States any bonds of the said United States, issued by way of loans, to aid in constructing or furnishing its road, or which has received from the United States any lands granted to it for similar purposes, shall make to the said auditor, any and all such reports as he may require from time to time, and shall submit its books and records to the inspection of said auditor, or any person acting in his place, or stead, at any time that said auditor may request, in the office where said books and records are usually kept, and the said auditor, or his authorized representative, shall make such transcript from the said books and records as he may desire." Have the books of the Southern Pacific Railroad Company since July 27, 1866, down to the present time, been open in all respects for the inspection of officers, or proper authorities of the United States?

(Same objection by the plaintiff as above stated.)

A. They have.

Q. Has there from time to time been any inspection made of the books of the Southern Pacific Railroad Company since July 27, 1866?

(Same objection by the plaintiff as above stated.)

A. There has not.

Q. But there have been these statements sent on from this office to them?

(Same objection by the plaintiff as above stated.)

A. Yes, sir, regularly.

It is admitted that the testimony taken above has the same force and effect as if the witness was duly sworn by the Master in Chancery himself, and all objections to the

manner of taking it are hereby waived, and the signature to deposition is also waived.

JOSEPH H. CALL,
Solicitor and of Counsel for Plaintiff.

JOSEPH D. REDDING,
Solicitor for Respondent Southern Pacific Railroad Company, J. A.

ANDERSON, FITZGERALD & ANDERSON,
Solicitors for defendants for whom we have appeared.

EDWIN BAXTER,
Solicitor for defendants for whom I have appeared.

WILL D. GOULD and JAMES H. BLANCHARD,
Attorneys for Joseph Hinkell.

JOHN D. BICKNELL,
Solicitor for L. L. Bradbury.

[Endorsed]: No. 68. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Railroad Company et al. Deposition of J. L. Willcutt. Joseph D. Redding, solicitor for respondent Southern Pacific Railroad Company. No. 8 Montgomery street, San Francisco, Cal.

In the Circuit Court of the United States, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff, vs. SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants.	Nos. 67, 68 & 69. Consolidated by order of Court.

Stipulation.

It is hereby stipulated and agreed by and between the respective parties to the above-entitled cause that the depositions and testimony of J. L. Wilcutt and Jerome Madden, and other witnesses *witnesses* in said cause, be taken before Charles T. Stanley, a notary public, at his office, No. 512 Montgomery street, San Francisco, or at such place as it may be adjourned to, on the thirteenth day of February, 1890, at 10 o'clock A. M., and continuing from time to time thereafter until completed, that the testimony may be written down in shorthand by a shorthand reporter, and thereafter written out in typewriting, and, after being so written out in typewriting, may be read to and corrected by the witnesses, and that said depositions and testimony when taken, be read and used in evidence in said cause, with the same effect as if taken

by an examiner pursuant to the laws of Congress and rules in equity of the Supreme Court, but without objection or exception to the time, place, or manner of taking the same, and the form of the question, unless noted at the time.

JOSEPH H. CALL,
Solicitor for plaintiff.

JOSEPH D. REDDING,
Solicitor for defendant, Southern Pacific Railroad Company.

Dated, San Francisco, the thirteenth day of February, 1890.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY OF KENTUCKY, LEWIS H. BIXBY, H. J. PARKS, CLARA E. CUMBERLAND, THOMAS S. OLDHAM, O. MORGAN, THE POMONA LAND AND WATER COMPANY, L. L. BRADBURY, H. M. CRAMPTON, CARLTON SEAVES, STODDARD JESS, ELIAS FINK, CHARLES N. PECK, S. W. MOORE, GEORGE D. RIPLEY, C. C. JOHNSON, WILLIAM S. HENDERSON, FRANK JOHNSON, GEORGE RHORES, CASSIE L. FOSS, and JOSEPH HINKELL,

Respondents.

Nos. 67, 68 & 69. Consolidated by order of Court.

Deposition of J. L. Willcutt.

(STEPHEN POTTER, Official Court Reporter, 325 Montgomery Street, Room 9.)

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Respondents.

Nos. 67,68 & 69. Consolidated by order of Court.

Deposition of J. L. Wilcutt, a witness called on behalf of the complainant taken before Charles T. Stanley, Esq., a notary public in and for the city and county of San Francisco, State of California, on Thursday, February 13, 1890, pursuant to the annexed stipulation, and by consent of the parties.

Counsel appearing:

Joseph H. Call, Esq., Solicitor for the complainant.

Joseph D. Redding, Esq., Solicitor for the respondent. The Southern Pacific Railroad Company.

(STEPHEN POTTER, Shorthand reporter, 325 Montgomery Street, Room 9, Telephone 1117.)

It is stipulated between the parties that the testimony taken before the notary public shall have the same force and effect as if taken before an examiner in chancery.

J. L. WILLCUTT, produced as a witness on behalf of the complainant, being first duly sworn, and cautioned, deposes and testifies as follows:

Direct Examination.

By MR. CALL. Q. Please state your present occupation?

A. Secretary of the Southern Pacific Railroad Company and other railroad corporations.

Q. State whether or not prior to October, 1870, you were secretary of the San Francisco & San Jose Railroad Company? A. I was.

Q. Were you also prior to that time secretary of the Santa Clara & Pajaro Valley Railroad Company.

(Question objected to by the respondent the Southern Pacific Railroad Company as immaterial, irrelevant, and incompetent.)

A. I was.

Q. Were you also prior to that time secretary of the California Southern Railroad Company?

(Question objected to by the respondent the Southern Pacific Railroad Company as immaterial, irrelevant, and incompetent.)

A. I was.

Q. Were you also prior to that time secretary of the Southern Pacific Railroad Company?

A. I was not.

Q. Have you been secretary of the Southern Pacific Railroad Company since the twelfth day of August, 1873? A. I have.

Q. Have you copies of the articles of incorporation of these railroad companies which we have mentioned which you can refer to?

A. I have all of them filed in my office.

Q. Will you be so good as to send and get them, if they are convenient, so that we can refer to them?

(Witness sends for the papers referred to.)

Q. Were you secretary of the Southern Pacific Branch Railroad Company prior to August 12, 1873?

(Question objected to by the respondent the Southern Pacific Railroad Company as irrelevant, immaterial, and incompetent.)

A. Yes, sir.

Q. Will you state what your general duties were with respect to your position as secretary of the several railroad companies that I have mentioned?

A. I had general charge of the accounts of the company, attended all meetings of the directors, and kept a record of the proceedings of the various meetings, and fulfilled the general duties of a secretary otherwise.

Q. It has been shown in evidence in this case by other testimony that a line of railroad from Tehachapi Pass via Los Angeles to the Colorado river at or near Yuma, was constructed and is in operation; are you familiar with that line of road, have you been over it?

A. Only partially.

Q. Do you know that part of it north of Los Angeles?

A. Yes, sir.

Q. What is the name of the railroad company that constructed that road?

A. The Southern Pacific Railroad Company.

Q. The company that you have been secretary of since August 12, 1873, before mentioned? A. Yes, sir.

(Question objected to by the respondent, the Southern Pacific Railroad Company as leading, and not proper direct examination, and said respondent moves to strike out the answer.)

(Witness produces the papers heretofore sent for.)

Q. What was the capital stock of the Southern Pacific Railroad Company which constructed that road from Tehachapi Pass to Los Angeles in the month of October, 1873?

(Question objected to by the respondent, the Southern Pacific Railroad Company, as ambiguous, unintelligible, and uncertain, and also as irrelevant, immaterial, and incompetent.)

A. Ninety million dollars.

Q. In October, 1873, how long a time had that company yet to endure under its articles?

(Question objected to by the respondent, the Southern Pacific Railroad Company, on the same grounds as last stated.)

A. Forty-two years; the articles of incorporation are dated November 29, 1865.

Q. You are reading from those?

A. I have the articles of incorporation before me dated November 29, 1865.

Q. You read that from the articles of incorporation of 1865?

A. I take that from the articles of incorporation of 1865.

Q. How long a time had it to endure by the articles of August 12, 1873?

(Question objected to by the respondent, the Southern Pacific Railroad Company, as ambiguous, uncertain, and unintelligible, and upon the further ground that it has not been stated that there were any articles of incorporation of that date last mentioned, nor has it been so shown.)

Q. I will ask the witness first if you have or can produce a copy of the articles of incorporation of August 12, 1873, being the articles of amalgamation of the Southern Pacific Railroad Company and the Southern Pacific Branch Railroad Company?

A. Articles of amalgamation and consolidation I can produce; I have them here.

Q. In order that you may understand this question, it has been shown in evidence that the line of road from Tehachapi Pass by way of Los Angeles to the Colorado river was constructed by a corporation by the name of the Southern Pacific Railroad Company between the years 1873 and 1878.

MR. REDDING. I would like to state that I think it has also been shown that that road was being constructed from 1871 until 1878, not from 1873. A map of the different locations was filed April 3, 1871, is not that so?

MR. CALL. I believe a map designating the route was filed on April 3, 1871.

Q. Please state what length of time the Southern Pacific Railroad Company, which constructed that road, had to endure under its articles from and after October, 1873, as shown by the articles?

(Question objected to by the respondent, the Southern Pacific Railroad Company as immaterial, and irrelevant, and also on the ground that the witness has answered the question.)

A. I am unable to answer it from the papers before me; I have only the time given in the articles of 1865, but nothing further.

Q. Have you the articles of 1873?

A. The articles of 1873 are the articles of association, amalgamation, and consolidation.

(Question objected to by the respondent, the Southern Pacific Railroad Company as incompetent, and also that the articles, if there are any, speak for themselves and are the best evidence.)

Q. Refer to article first of the articles of association of 1873.

A. The articles of association, amalgamation, and consolidation of the twelfth of August, 1873, provide for the existence of that corporation for the period of fifty years from the date of the articles.

Q. Will you attach a copy of those articles to your deposition? A. Yes, sir.

Q. Will you please do so at your convenience?

A. Yes, sir.

(Objection by the respondent, the Southern Pacific Railroad Company as immaterial, irrelevant, and incompetent.)

Q. Can you produce a copy of the articles of incorporation of the Southern Pacific Branch Railroad Company? A. Yes, sir.

Q. Have you a copy there? A. I have.

Q. Referring to those articles please state what was the capital stock of that company?

A. Twenty million dollars.

Q. Will you please attach a copy of those articles to your deposition? A. Yes, sir.

(Objection by the respondent, the Southern Pacific Railroad Company, as immaterial, irrelevant, and incompetent.)

Q. Can you produce a copy of the articles of incorporation and association of the Southern Pacific Railroad Company which were entered into October 11, 1870?

A. Yes, sir.

Q. You will please do so and make them a part of your deposition.

(Objection by the respondent, the Southern Pacific Railroad Company, as immaterial, irrelevant, and incompetent.)

Q. Please state whether or not a corporation by the name of the Southern Pacific Railroad Company, having a capital stock of seventy million dollars, and no more than that and no less, constructed any railroad between Tehachapi Pass and Los Angeles after the year 1873?

(Question objected to by respondent, the Southern Pacific Railroad Company, as immaterial, irrelevant, and incompetent, and as asking the opinion of the witness.)

A. I have known but one corporation, the Southern Pacific Railroad Company, without regard to the capital stock; it has not figured at all upon my books; I have continued the business along with one corporation.

Q. What was the capital stock of that corporation in October, 1873?

(Question objected to by respondent, the Southern Pacific Railroad Company upon the same grounds as last stated.)

A. The capital stock by the articles of consolidation of August, 1873, was ninety million dollars.

Q. What was the capital stock in the year 1874 of that company?

(Question objected to by respondent, the Southern Pacific Railroad Company upon the same grounds as last stated.)

A. The same amount.

Q. Can you now state, having refreshed your memory, whether a corporation by the name of the Southern Pacific Railroad Company, with a capital stock of seventy million dollars, constructed any railroad or did any railroad business after October, 1873?

(Question objected to by respondent, the Southern Pacific Railroad Company, as irrelevent, immaterial, and incompetent, and as asking for the opinion of the witness upon a legal conclusion.)

A. I think I have answered the question that as far as my accounts show and the records as taken from my books I have never distinguished between the amount of one capital stock and another; our accounts have been kept along in a continuous set of books, and it has been the Southern Pacific Railroad Company without regard to capital stock.

Q. Was it part of your duty as secretary to sign the certificates of stock, and would it be necessary for you to know the amount of the capital stock that would be authorized to be issued? A. Yes, sir.

Q. Can you not then state whether there was a company by the name of the Southern Pacific Railroad Company with a capital stock of seventy million dollars and no more,—whether such a company did business after October, 1873?

(Question objected to by respondent, the Southern Pacific Railroad Company on the same grounds as last stated, and also that the witness has answered the question.)

A. I have never drawn the lines of the business of the company upon the representation of the capital stock; the capital stock account has shown the capital standing at different times, but does not appear upon separate books, to have been reduced or increased in accordance with the consolidations which have been made, but the accounts have continued in one set of books, so that in doing any business I have never drawn any line as to whether it was a seventy million dollars capital or ninety million dollars capital, the company that was doing the business; the business was continued along in the name of the Southern Pacific Railroad Company.

Q. Only one set of books?

A. One set of books being used, since the consolidation of 1870, when I found the old books were insufficient to carry on the business of the company as consolidated; I then got a new set of books; since that I have continued the accounts along in those books without regard to the capital stock or any difference in the corporation.

Q. At the time that the articles of association of August, 12, 1873, were entered into, it was provided in those articles by article fifth as follows, "Each stockholder of

said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him; and where the same has not been fully paid up he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold"; you will please state whether the stockholders of the Southern Pacific Branch Railroad Company, or any of them, or all of them, surrendered their certificates and received new certificates?

(Question objected to by respondent, the Southern Pacific Railroad Company as immaterial, irrelevant, and incompetent.)

A. They did.

Q. Did the stockholders of the old Southern Pacific Railroad Company receive new certificates, or did they retain them?

(Question objected to by respondent, the Southern Pacific Railroad Company as immaterial, irrelevant, and incompetent.)

A. They did not receive new ones.

Q. Did the stockholders who owned stock which was fully paid up and subscribed receive any other or different evidence of their holdings than what they originally held?

A. No change was made in the Southern Pacific.

Q. They simply retained those same certificates?

A. The same certificates.

Q. And an additional twenty million dollars was issued to the holders of the stock of the Southern Pacific Branch Railroad Company?

A. If that amount had been fully paid they received stock to the extent which they had paid, whatever it may have been; their certificates of stock or evidence of indebtedness were surrendered, and the certificates of stock or the evidence of ownership of the Southern Pacific Railroad Company were delivered to them and received by them in exchange for it.

Q. In the articles of association, amalgamation, and consolidation dated August 12, 1873, between the Southern Pacific Railroad Company, of the first part, and the Southern Pacific Branch Railroad Company, of the second part, it is stated in the articles that "the said party of the second part was heretofore, towit: on the twenty-third day of December, A. D. 1872, duly incorporated and organized under the laws of the State of California, for the purpose of purchasing, constructing, owning, maintaining, and operating a railroad from a point on the Southern Pacific Railroad (the railroad of the party of the first part) at or near Salinas City, in the county of Monterey, southeasterly to a point in Kern county, south of Tulare lake, intersecting the San Joaquin Valley division of the said Southern Pacific Railroad, also from a point on the above described line at or near San Miguel, in San Luis Obispo county, thence in a southerly direction to a point of intersection in Los Angeles county, with a line of

the Southern Pacific Railroad running from Tehachapi Pass by way of Los Angeles to Fort Yuma, said road passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara, and Los Angeles, and said roads in the aggregate being as near as may be four hundred and twenty-eight miles in length"; can you state whether the Southern Pacific Railroad Company, as consolidated by these articles of 1873, the new company, went on and constructed any part of the railroads that it is here provided that the Southern Pacific Branch Railroad Company might construct?

(Question objected to by respondent the Southern Pacific Railroad Company as immaterial, irrelevant and incompetent.)

A. The Southern Pacific Railroad Company has constructed a road along the line mentioned to San Miguel Station; the road has been constructed from Salinas to San Miguel.

Q. Running through what counties?

A. I answer without knowing the counties, that the line has been constructed from Salinas City to San Miguel.

Q. That line you say was constructed by the Southern Pacific Railroad Company?

A. Constructed by the Southern Pacific Railroad Company.

Q. Do you know the year that that was constructed in?

A. I would have to refer to my books to give the different dates.

Q. About the year, about the time?

A. 1888 or 1889, I should say.

Mr. REDDING. Q. 1888? A. 1889.

Mr. CALL. Q. Was that road constructed in pursuance of these articles and the authority here set forth?

(Question objected to by respondent the Southern Pacific Railroad Company as incompetent, immaterial, and irrelevant, and as leading, and as calling for the opinion of the witness in reference to matters to be proven from the records, if at all.)

A. I assume it to have been.

Q. I believe you stated that you had been secretary of the Southern Pacific Railroad Company since August, 1873? A. Yes, sir.

Q. Keeping one set of books for the different roads that have been amalgamated with the Southern Pacific and carrying on the business as one corporation?

A. Continuously.

Q. Can you state whether or not the Southern Pacific Branch Railroad Company, as such, constructed any railroad after the articles were entered into of August 12, 1873? A. It did not.

Q. Did the San Francisco & San Jose Railroad Company, that was consolidated with the Southern Pacific Railroad Company October 11, 1870, construct any railroad after the eleventh day of October, 1870?

(Question objected to by respondent the Southern Pacific Railroad Company as immaterial, irrelevant, and calling for an incompetent answer and the opinion of the witness.)

A. It did not.

Q. Did the Santa Clara & Pajaro Valley Railroad Company, or the California Southern Railroad Company construct any railroad after that date?

(Question objected to by respondent, the Southern Pacific Railroad Company on the same grounds as last stated.)

A. No, sir.

Q. But after the articles of consolidation of October 11th, 1870, and of August 11, 1873, I understand that the business was all done under the name of the Southern Pacific Railroad Company as one corporation, acting under the new articles?

(Question objected to by the respondent the Southern Pacific Railroad Company, as leading and suggestive, and as incompetent, irrelevant and immaterial.)

A. Correct; it was all done under the name of the Southern Pacific Railroad Company.

Q. I suppose it acted by authority of the articles of incorporation and association entered into from time to time as it was done, was it not?

(Question objected to by respondent, the Southern Pacific Railroad Co mpany, as leading and suggesting the answer, and calling for the opinion of the witness, and as incompetent, irrelevant, and immaterial.)

A. My answer heretofore has been that it was done in the name of the Southern Pacific Railroad Company without regard to its capital stock or any re-organization, it may be said, or consolidation, that I know of.

Q. But you carried on the business as one company, and only one corporation?

A. As the Southern Pacific Railroad Company, and only one corporation that I know of.

Cross-examination.

By Mr. REDDING. Q. What was the name of the corporation that existed prior to the eleventh day of October, 1870, and with which you were connected—was it known as the Southern Pacific Railroad Company?

A. I was not connected with the Southern Pacific Railroad Company prior to October 11, 1870, but with three corporations that were consolidated with that company, namely, the San Francisco & San Jose Railroad Company, the Santa Clara & Pajaro Valley Railroad Company, and the California Southern Railroad Company.

Q. They were consolidated on that day, were they?

A. The eleventh of October, 1870.

Q. Did you become secretary of the Southern Pacific Railroad Company then, or how soon thereafter?

A. Immediately on the organization; immediately after the filing of the articles of consolidation in the office of the secretary of state.

Q. Was there existing a corporation known as the Southern Pacific Railroad Company subsequent to the eleventh day of October, 1870? A. Yes, sir.

Q. To refresh your mind with reference to the date of the several acts of Congress, you will remember that on the twenty-seventh day of July, Congress passed an act entitled, "An act granting land to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast";

that act of Congress contains what is known as the grant to the Southern Pacific Railroad Company of 1866; have you made any reports to the interior department, or to the President of the United States, or to any person in authority, with reference to the Southern Pacific Railroad Company and that act of Congress and the terms of that act of Congress; in other words, have any reports gone forth from this office, or from your office, to Washington?

(Question objected to by complainant as incompetent, immaterial and irrelevant, and not the best evidence.)

A. Annual reports have been made every year.

Q. What was the name of the company that sent those annual reports?

(Question objected to by complainant on the same grounds as last stated.)

A. The Southern Pacific Railroad Company.

Q. Is that the Southern Pacific Railroad Company of which you were secretary?

(Question objected to by complainant on the same grounds as last stated.)

A. Yes, sir.

Q. Have you continued to be secretary ever since and down to the present day?

(Question objected to by complainant on the same grounds as last stated.)

A. Yes, sir.

Q. And you now are secretary of that company?

(Question objected to by complainant on the same grounds as last stated.)

A. Yes, sir.

Q. On the twelfth day of August, 1873, the Southern Pacific Railroad Company which is the Southern Pacific Railroad Company which received that land grant, and the Southern Pacific Branch Railroad Company, amalgamated and consolidated; do you know whether or not reports went to Congress, or to Washington, or to any person in authority, after 1873, from your office with reference to the act of Congress of July 27, 1886, and also with reference to the act of Congress of March 3, 1871, which is known as the Southern Pacific Branch Line act grant from Tehachapi by way of Los Angeles to Fort Yuma; do you know whether any reports have gone forth from your office to Washington, or any other place, with reference to those?

(Question objected to by complainant on the same grounds as last stated.)

A. A report has been sent forward every year.

Q. Do you know to whom they were sent?

(Question objected to by complainant on the same grounds as last stated.)

A. From 1870 to June, 1877, to the secretary of the interior.

Q. Were they received by him?

(Question objected to by complainant on the same grounds as last stated.)

A. They were; they were sent on regularly to be filed.

Mr. CALL. I have no objection to the witness stating that they were received.

A. They were received at Washington.

Mr. CALL. I object to the evidence for the reasons above stated.

Mr. REDDING. Q. What was the nature of the reports, and for what purpose were they sent?

(Question objected to by complainant on the same grounds as last stated.)

A. The annual report of the company to the secretary of the interior as required by certain acts of Congress; they were all sworn statements.

Q. Have you been in constant communication with Washington, and with the various authorities, annually, with reference to the affiairs of the Southern Pacific Railroad Company since the date of these acts of Congress that I have mentioned?

(Question objected to by complainant on the same grounds as last stated.)

A. I have.

Q. Please continue and state further to whom those reports were made and what the nature of them was?

(Question objected to by complainant on the same grounds as last stated.)

A. I answered to June 30, 1877, they were sent to the secretary of the interior; to 1879 they were sent to the United States auditor of railroad accounts; subsequently to that date to the commissioner of railroads, department of the interior.

Q. Have there been annual reports made?

(Question objected to by complainant on the same grounds as last stated.)

A. There have been.

Q. And accepted?

(Question objected to by complainant on the same grounds as last stated.)

A. Yes, sir.

Q. Have those reports been made by the Southern Pacific Railroad Company?

(Question objected to by complainant on the same grounds as last stated.)

A. They have.

Q. Are you the custodian of the affairs and books and correspondence of the corporation the Southern Pacific Railroad Company?

A. I am, with the exception of the land department.

Q. I refer to the executive department; are you now testifying from your investigations of the files of your office? A. Yes, sir.

Q. And from your examination of the records?

A. Yes, sir.

Q. And correspondence? A. Yes, sir.

Q. Have these reports been made by the Southern Pacific Railroad Company?

(Question objected to by complainant on the same grounds as last stated.)

A. Yes, sir.

Q. Why is it since 1878 you have made the annual reports to the commissioner of railroads?

(Question objected to by complainant on the same grounds as last stated.)

A. Under the act of Congress approved June 19, 1878, entitled, "An act to create an auditor of railroad accounts, and for other purposes."

Q. Section IV of that act reads: "That each and every railroad company aforesaid, which has received from the United States any bonds of the said United States, issued

by way of loans, to aid in constructing or furnishing its road, or which has received from the United States any lands granted to it for similar purposes, shall make to the said auditor any and all such reports as he may require from time to time, and shall submit its books and records to the inspection of said auditor, or any person acting in his place or stead, at any time that said auditor may request, in the office where said books and records are usually kept, and the said auditor, or his authorized representative, shall make such transcript from the said books and records as he may desire"; have the books of the Southern Pacific Railroad Company since July 27, 1866, down to the present time, been open in all respects for the inspection of officers or proper authorities of the United States?

(Question objected to by complainant on the same grounds as last stated.)

A. Yes, sir.

Q. Has there from time to time been any inspection made of the books of the Southern Pacific Railroad Company since July 27, 1866?

(Question objected to by complainant on the same grounds as last stated.)

A. No, sir.

Q. But there have been these statements sent on from this office regularly?

(Question objected to by complainant on the same grounds as last stated.)

A. Yes, sir.

Q. Have you had papers served upon you as secretary of the Southern Pacific Railroad Company in suits

brought against it by individuals, and companies, and corporations? A. Yes, sir.

Q. I mean acting as secretary for the respondent, the Southern Pacific Railroad Company, in this suit; you are the secretary of the respondent in this suit, entitled case No. 68, now pending in the Circuit Court of the United States, Ninth Circuit, Southern District of California?

A. Yes, sir.

Q. Were you ever served with any papers in the tax suits brought by the State of California against this respondent?

(Question objected to by complainant as incompetent, immaterial, and irrelevant.)

A. Yes, sir.

Q. I now refer you to Volume 127 of the United States Supreme Court Reports, October Term, 1887, on the first page thereof, and from that page on several pages you will see a decision or decisions in the following entitled cases: "California vs. The Central Pacific Railroad Company," "California vs. The Southern Pacific Railroad Company," and other cases; do you know whether or not the corporation The Southern Pacific Railroad Company therein sued is the same corporation in fact as is sued in this case?

(Question objected to by complainant as incompetent, immaterial, and irrelevant.)

A. It is.

Q. Were you secretary of this corporation at the time it was sued in that suit?

(Question objected to by complainant on the same

grounds as last stated.)

A. Yes, sir.

Q. Has there been any change of any nature made in the books of your office, or by resolution of the board of directors, or by meeting of the stockholders, as to the affairs of the Southern Pacific Railroad Company between 1885 and the present date?

(Question objected to by complainant on the same grounds as last stated.)

A. No, sir.

Q. If there had been would you know of it, and would the same have been entered on your books?

(Question objected to by complainant on the same grounds as last stated.)

A. Yes sir.

Q. Did you go over the road of the Southern Pacific Railroad Company in the course of its construction between Tehachapi and Los Angeles or between Tehachapi and Fort Yuma, or any portion of it; I refer now to the Branch line?

A. I passed over the road to Los Angeles and some points beyond there several times.

Q. Did any vouchers or bills for expenditure, or any of the amounts disbursed under your supervision, control, or inspection in the course of its construction?

A. In connection with its construction?

Q. Yes, or in connection with the expenses of the construction?

A. The bills for construction did.

Q. Have the bills for the maintenance since its con-

struction come under your inspection or control since that time?

A. Up to the time of its being leased to the Central Pacific Railroad Company and the Southern Pacific Company.

Q. That is to say up to the time that the Central Pacific Railroad Company and the Southern Pacific Company assumed the lease of its working material?

A. Yes, sir.

Q. Is the company known as the Southern Pacific Railroad Company today,—is it a fact the same company that constructed and maintained the construction of the road that you went over from Tehachapi by the way of Los Angeles to Fort Yuma, or along any portion of the road?

(Question objected to by complainant as immaterial, incompetent, and irrelevant, and as calling for the opinion of the witness, and a conclusion of law, and as incompetent for the reason that it has been previously shown by the proper proofs what the facts were in that respect.)

A. I have already answered that I know but one company, the Southern Pacific Railroad Company.

Q. And that is the same company that existed then, and now exists, so far as your knowledge extends?

(Question objected to by complainant on the same grounds as last stated, and the additional objection that the witness has on his direct and cross-examination fully answered the question and stated what the facts were.)

A. Yes, sir.

Corrections: In the first answer given on page 13 wit-

ness desires to correct same and answer as follows: "The Southern Pacific Railroad Company has constructed a road along the line mentioned to Santa Margarita; the road has been constructed from Salinas to Santa Margarita; also from Elwood, Santa Barbara county, to connect with the Los Angeles line at Saugus, in Los Angeles county."

In answer to question following last answer referred to on same page the witness desires to correct his answer so as to read as follows: "I answer, that without remembering whether there are any intervening counties, that the line has been constructed from Salinas city in Monterey county to Santa Margarita in San Luis Obispo county, and from Elwood to Saugus as aforestated."

In answer to third question of the cross-examination, the witness desires to strike out the answer given therein and answer the same as follows: "On the date of their consolidation, eleventh of October, 1870."

J. L. WILLCUTT, E. H. C.

Subscribed and sworn to before me by said J. L. Willcutt in the city and county of San Francisco, this fifteenth day of February, A. D. 1890.

CHAS. T. STANLEY,

Notary public in and for the city and county of San Francisco, State of California.

[Seal]

City and County of San Francisco, } ss.
State of California. }

I, Charles T. Stanley, a notary public in and for said city and county, do hereby certify that pursuant to the

foregoing and annexed stipulation entered into by the parties in the case of The United States of America vs. The Southern Pacific Railroad Company and others, No. 69 on the docket of the United States Circuit Court, Southern District of California, and by the agreement of the parties and their solicitors, I did take the deposition of the within named witness, J. L. Willcutt, as follows:

By agreement of the respective solicitors for the parties I adjourned the taking of said deposition from my office to the office of the Southern Pacific Railroad Company in this city, Mr. Joseph D. Redding, solicitor for the Southern Pacific Railroad Company, and Mr. Joseph H. Call, solicitor for the United States, being personally present, and having waived all formalities, and on the thirteenth day of February, 1890, at 11 o'clock A. M., the said J. L. Willcutt was produced, and was by me first duly sworn and examined, and his testimony reduced to writing in the mode provided in said stipulation, and did testify as set forth in the foregoing deposition; and after the same was reduced to writing it was carefully read over to said witness, and being by him corrected, was by him signed in my presence and sworn to before me in this city on the fifteenth day of February, 1890;

And I do further certify that the above-named witness resides at the city of Oakland, county of Alameda, more than one hundred miles from the city of Los Angeles, and outside of the district of the United States Circuit Court for the Southern District of California.

And I do further certify that I am not of counsel, nor attorney for either, or any party to said suit, nor interested in the event of the suit.

In witness whereof, I have hereunto set my hand and seal this seventeenth day of February, A. D. 1890.

CHAS. T. STANLEY,
Notary public.

[Seal]

State of California, Department of State.

I, H. L. Nichols, secretary of state of the State of California, do hereby certify that the annexed is a true, full, and correct copy of articles of association, amalgamation, and consolidation of the San Francisco & San Jose, the Santa Clara & Pajaro Valley, the Southern Pacific and the California Southern Railroad Companies, now on file in my office.

Witness my hand and the great seal of State, at office in Sacramento, California, the eighth day of December A. D. 1870.

H. L. NICHOLS,
Secretary of State.
Lew. B. Harris,
Deputy.

[Seal.]

Articles of Association, Amalgamation, and Consolidation.

Articles of association, amalgamation, and consolidation, made and executed on this eleventh day of October, A. D. 1870, by and between the San Francisco & San Jose Railroad Company of the first part, the Santa Clara & Pajaro Valley Railroad Company of the second part, the Southern Pacific Railroad Company of the

third part, and the California Southern Railroad Company of the fourth part.

Witnesseth: That whereas, the said party of the first part was, heretofore, towit: on the eighteenth day of August, 1860, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, maintaining, and operating a railroad from the city of San Francisco in the county of San Francisco in said State, *though* said county and the counties of San Mateo and Santa Clara to the city of San Jose in said last named county, a distance of forty-eight miles.

And, whereas, the said party of the second part was, heretofore, towit: on the second day of January, 1868, duly incorporated and organized under the laws of said State for the purpose of constructing, owning, maintaining and operating a railroad from a point at or near the city of San Jose in the county of Santa Clara and State aforesaid, connecting at said point with the railroad of the said party of the first part, and to pass thence to a point at or near the town of New Gilroy In the same county, a distance of thirty miles.

And, whereas, the said party of the third part was, heretofore, towit: on the second day of December, 1865, duly incorporated and organized under the laws of said State for the purpose of constructing, owning, maintaining, and operating a railroad from some point on the bay of San Francisco in said State, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Kern, Los Angeles, and San Diego to the town of San Diego in said State, thence eastward

through the county of San Diego to the eastern boundary of said State, a distance of seven hundred and twenty miles as near as may be, there to connect with a contemplated railroad from said eastern boundary line of said State to the Mississippi river, and has received large grants of land from the government of the United States to aid it in the construction and equipment of said road.

And, whereas, the said party of the fourth part was, heretofore, towit: on the twenty-second day of January, 1870, duly incorporated and organized under the laws of said State for the purpose of constructing, owning, and maintaining a railroad from a point at or near the town of Gilroy in the county of Santa Clara in said State, and to pass through the counties of Santa Clara, Santa Cruz, and Monterey to a point at or near the town of Salinas city in said last-named county, a distance of forty-five miles as near as may be.

And whereas, said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, lands, and franchises will be mutually advantageous.

And whereas, more than three-fourths in value of all the stockholders in interest of each of said parties have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth.

Now, therefore, under and by virtue of the statute of the State of California, in such case made and provided, the said parties do hereby mutually covenant and agree,

each with each and all the others to the following articles, towit:

Article First. Said parties do hereby amalgamate and consolidate themselves into a new corporation under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years, from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever as well in possession as in expectancy, at law or in equity, and do grant, convey, and vest the same in said new corporation as fully as the same are now severally held and enjoyed by them or either of them, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, claims, and charges thereon, or in anywise affecting the same.

Article Second. The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate a continuous line of railroad from the city of San Francisco in the State of California through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego to some point on the Colorado river in the southeastern part of the State of California, a distance of seven hundred and twenty miles as near as may be; also a line of railroad from the town of Gilroy in the county of Santa Clara in said State passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City, in said last-named

county, a distance of forty-five miles as near as may be; also such branches to said lines as the board of directors of said new corporation may hereafter consider advantageous to said corporation and direct to be established.

Article Third. The board of directors of said new corporation shall consist of seven persons and the following-named persons shall act as such directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation hereafter to be adopted, viz: Lloyd Tevis, Leland Stanford, Charles Crocker, C. P. Huntington, Mark Hopkins, Charles Mayne and Peter Donahue.

Article Fourth. The capital stock of said new corporation shall be fifty million dollars, consisting of five hundred thousand shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

Article Fifth. Each stockholder of each of said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him, and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct, upon the surrender of such evidence of his ownership of such unpaid stock of his respective company, as he may now hold.

Article Sixth. Said new corporation shall assume and perform all the contracts, agreements, covenants, duties and obligations of what kind soever, of each of said parties, and shall pay and discharge all debts, claims and demands, existing against either and all of said parties, but nothing herein contained shall release the said parties or either of them, or their stockholders, or any of them from any of their just liabilities.

In testimony whereof, the said parties have severally caused these articles to be signed and executed by affixing their respective corporate names and seals, by their respective presidents and secretaries, pursuant to the orders of their respective boards of directors heretofore made, on the day and year first above written.

SOUTHERN PACIFIC RAILROAD COMPANY,

By LLOYD TEVIS, President.

B. B. MINOR, Secretary.

[Southern Pacific Railroad Company Seal.]

THE SAN FRANCISCO & SAN JOSE RAILROAD COMPANY,

By H. M. NEWHALL, President.

J. L. WILLCUTT, Secretary.

[San Francisco & San Jose Railroad Company Seal.]

SANTA CLARA & PAJARO VALLEY RAILROAD COMPANY,

By P. DONAHUE, President.

J. L. WILLCUTT, Secretary.

[Santa Clara and Pajaro Valley Railroad Co. Seal.]

CALIFORNIA SOUTHERN RAILROAD COMPANY,

By CHAS. MAYNE, President.

[Seal.] J. L. WILLCUTT, Secretary.

The undersigned, being holders of more than three-fourths in value of the capital stock of the San Francisco & San Jose Railroad Company, party of the first part, in and to the foregoing articles, do hereby consent to the terms and conditions in said articles contained, and do consent to the consolidation therein provided for. Done this the eleventh day of October, 1870.

H. M. NEWHALL,
P. DONAHUE,
CHAS. MAYNE,
W. C. RALSTON,
JAS. O. NEIL,
G. PALACHE,
MYLES D. SWEENEY.

The undersigned, being holders of more than three-fourths in value of the capital stock of the Santa Clara & Pajaro Valley Railroad Company, party of the second part in and for the foregoing articles, do hereby consent to the terms and conditions in said articles contained, and do consent to the consolidation therein provided for.

Done this the eleventh day of October, 1870.

H. M. NEWHALL,
P. DONAHUE,
CHAS. MAYNE,
JAS. O'NEILL,
MYLES D. SWEENEY,
RICH'D P. HAMMOND,
J. L. WILLCUTT,
J. O. ELDRIDGE,
EDWARD MARTIN.

The undersigned, being holders of more than three-fourths in value of the capital stock of the Southern Pacific Railroad Company, party of the third part in and to the foregoing articles, do hereby consent to the terms and conditions in said articles contained, and do consent to the consolidation therein provided for.

Done this eleventh day of October, 1870.

LLOYD TEVIS,
WM. E. BARRON,
By his attorney in fact.
THOMAS BELL,
THOMAS BELL,
W. B. CARR,
B. B. MINOR.

The undersigned, being holders of more than three-fourths in value of the capital stock of the California Southern Railroad Company, a party of the fourth part in and to the foregoing articles, do hereby consent to the terms and conditions in said articles contained, and do consent to the consolidation therein provided for.

Done this the eleventh day of October, 1870.

H. M. NEWHALL,
P. DONAHUE,
CHAS. MAYNE,
MYLES D. SWEENEY,
RICH'D P. HAMMOND,
J. L. WILLCUTT,
G. PALACHE,
J. O. ELDRIDGE,
EDWARD MARTIN.

[Endorsed]: Southern Pacific Railroad Company, being articles of association, amalgamation and consolidation of the San Francisco & San Jose, the Santa Clara & Pajaro Valley Railroad Companies, and the Southern Pacific and California Southern Railroad Companies.

Filed in office of the secretary of state, October 12, A. D. 1870.

H. L. NICHOLS,
Secretary of State.

Articles of Association of the Southern Pacific Branch Railroad Company.

Know all men by these presents: That we, the undersigned, being subscribers to the capital stock of a contemplated railroad from a point on the Southern Pacific Railroad at or near Salinas City, in Monterey county, southeasterly to a point in Kern county south of Tulare Lake, intersecting the San Joaquin Valley division of the said Southern Pacific Railroad.

Also, from a point on the above described line, at or near San Miguel in San Luis Obispo county; thence in a southerly direction to a point of intersection in Los Angeles county with the line of the Southern Pacific Railroad running from Tehichipa Pass by way of Los Angeles to Fort Yuma, which stock so subscribed by us, amounts to not less than one thousand dollars per mile for each mile of said railroad, and ten per cent in cash has been actually and in good faith paid thereon to E. H. Miller, Jr., one of the number, who has been by us appointed temporary treasurer and being desirous of form-

ing a corporation do hereby, at a regular meeting of said stockholders held pursuant to due notice thereof in writing given by said treasurer, adopt the following:

Articles of Association.

Article First. We, the undersigned, do hereby form and organize ourselves into a corporation, under and in pursuance of an act of the State of California entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto," approved May 20, 1861, and of the several acts supplementary thereto and amendatory thereof, for the purpose of purchasing, constructing, owning, maintaining and operating a railroad from a point on the Southern Pacific Railroad at or near Salinas City in the county of Monterey southeasterly to a point in Kern county south of Tulare Lake, intersecting the San Joaquin Valley division of the said Southern Pacific Railroad;

Also, from a point on the above described line, at or near San Miguel in San Luis Obispo county; thence in a southerly direction to a point of intersection in Los Angeles county, with the line of the Southern Pacific Railroad running from Tehichipa Pass by way of Los Angeles to Fort Yuma. The counties into or through which the said railroad is intended to pass are Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles.

Article Second. The name of the said corporation is, and shall be, the Southern Pacific Branch Railroad Company.

The time of the existence of the said company shall be fifty years. And the length of the proposed railroad, as near as may be, is one hundred and eighty miles, for the first described part; and two hundred and forty miles for the second described part, being an aggregate of four hundred and twenty miles.

Article Third. The capital stock of the said corporation shall be twenty millions dollars, being the actual contemplated cost of constructing said railroad, together with the cost of the right of way, motive power and every other appurtenance and thing, for the completion and running of said road, as nearly as can be estimated by competent engineers. Said capital stock shall consist of and be divided into two hundred thousand shares of one hundred dollars each.

Article Fourth. The number of directors to manage the affairs of said corporation shall be five, and the names of the persons chosen to act as such directors, and to hold their offices until others are duly elected are E. H. MILLER, Jr., ALBERT GALLATIN, B. B. REDDING, BENJAMIN R. CROCKER and CHARLES H. CUMMINGS. All of whom are subscribers to these articles of association.

In testimony whereof, we have hereunto severally subscribed our names, places of residence, and the number of said shares of stock held by each, this twentieth day of December, 1872.

Names.	Residence.	No. of Shares.	Amount.
E. H. MILLER, Jr.	Sacramento	Five	$ 500.00
ALBERT GALLATIN	"	Five	500.00
W. R. S. FOYE	"	Five	500.00
C. H. CUMMINGS	"	Five	500.00
E. I. ROBINSON	"	Five	500.00
LELAND STANFORD	"	2,085	208,500.00
MARK HOPKINS	"	2,085	208,500.00
BENJAMIN B. REDDING	"	Five	500.00
E. W. HOPKINS	"	Five	500.00
B. R. CROCKER	"	Five	500.00
		4,210	$421,000.00

County of Sacramento,
State of California. ss.

On this twenty-third day of December, A. D. 1872, personally appeared before the undersigned, a notary public in and for said county of Sacramento, Charles H. Cummings, E. H. Miller, Jr., and Albert Gallatin, three of the directors of the Southern Pacific Branch Railroad Company, who, being by me duly sworn, say, that more than one thousand dollars for each and every mile of the railroad proposed and mentioned in the foregoing articles of association, towit: four hundred and twenty-one thousand ($421,000.00) dollars, have actually and in good faith been subscribed to the capital stock of said company by persons whose names appear subscribed to the said articles of association, and that ten per cent on the said

amount so subscribed, towit: forty-two thousand one hundred ($42,100.00) dollars, have actually and in good faith been paid in cash to E. H. Miller, Jr., the treasurer named and appointed by said subscribers from among their number, and that the said subscribers are all known to the said three directors, and to each of them, to be subscribers to said articles of association, and to be the persons so represented.

E. H. MILLER, Jr.
ALBERT GALLATIN.
C. H. CUMMINGS.

Subscribed and sworn to before me this twenty-third day of December, A. D. 1872.

CHARLES J. TORBERT,
Notary public in and for Sacramento county, State of California.

[Seal]

[Endorsed]: Filed in the office of the secretary of state December 23, 1872. Drury Melone, secretary of state. Per H. H. Russell, Deputy.

State of California—Department of State.

I, D. M. Burns, secretary of state of the State of California, do hereby certify that I have compared the annexed copy of articles of association of the Southern Pacific Branch Railroad Company filed Dec. 23, 1872, in this office with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the twenty-seventh day of March, A. D. 1880. D. M. BURNS,
Secretary of State.

[Seal] By —— ——— Deputy.

Articles of Association
of
S. P. and S. P. Branch R. R. Companies.

Articles of association, amalgamation and consolidation made and executed on this the twelfth day of August, A. D. 1873, by and between the Southern Pacific Railroad Company of the first part, and the Southern Pacific Branch Railroad Company of the second part,

Witnesseth: That whereas the said party of the first part heretofore, towit: on the eleventh day of October, A. D. 1870, was duly incorporated and organized under the laws of the State of California, by the amalgamation and consolidation of the following railroad corporations theretofore existing under the laws of said State, towit, The San Francisco & San Jose Railroad Company, The Santa Clara & Pajaro Valley Railroad Company, The Southern Pacific Railroad Company, and the California Southern Railroad Company, pursuant to articles of amalgamation and consolidation of that date by them agreed upon, which articles were subsequently amended, towit: on the eleventh day of April, A. D. 1871, by virtue of the laws of said State, whereby said corporation became duly incorporated and organized under the laws of said State for the purpose of purchasing, constructing, owning, maintaining, and operating a continuous line of railroad from the city of San Francisco in the State of California,

through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego to some point on the Colorado river in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Tehichipa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river, a distance of three hundred and twenty-four miles as near as may be; also a line of railroad from the town of Gilroy in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City in said last named county, a distance of forty-five miles, as near as may be, and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established.

And whereas the said party of the second part was heretofore, towit: on the twenty-third day of December, A. D. 1872, duly incorporated and organized under the laws of the State of California for the purpose of purchasing, constructing, owning, maintaining and operating a railroad from a point on the Southern Pacific Railroad (the railroad of the party of the first part) at or near Salinas City in the county of Monterey, southeasterly to a point in Kern county south to Tulare Lake, intersecting the San Joaquin Valley division of the said Southern Pacific Railroad; also from a point on the above described line, at or near San Miguel in San Luis Obispo county,

thence in a southerly direction to a point of intersection in Los Angeles county with the line of the said Southern Pacific Railroad running from Tehichipa Pass by way of Los Angeles to Fort Yuma—said roads passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles, and said roads, in the aggregate being, as near as may be, four hundred and twenty-eight miles in length.

And whereas said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, land and franchises will be mutually advantageous;

And whereas more than three-fourths in value of all the stockholders in interest of each of said parties, have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth;

Now therefore, under and by virtue of the statutes of the State of California, in such case made and provided, the said parties do hereby mutually covenant and agree, each with the other, to the following articles, towit:

Article First. Said parties do hereby amalgamate and consolidate themselves into a new corporation under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever as well in

possession as in expectancy at law or in equity, and do grant, convey and vest the same in the said new corporation, as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, judgments, claims and charges thereon or in anywise affecting the same, or any part thereof.

Article Second. The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate the several lines of railroad hereinbefore described, towit: a line of railroad from the city of San Francisco in the State of California through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego to some point on the Colorado river in the southeastern part of the State of California, a distance of seven hundred and twenty miles as near as may be; also a line of railroad from a point at or near Tehichipa Pass, by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river, passing through the counties of Los Angeles, San Bernardino and San Diego, a distance of three hundred and twenty-four miles as near as may be; also a line or railroad from the town of Gilroy in the county of Santa Clara in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City in said last-named county, a distance of forty-five miles, as near as may be; also a line of railroad from a point on the line thirdly above described at or near Salinas City in

the county of Monterey southeasterly through said county and into Kern county to a point south of Tulare Lake in said last-named county, intersecting at said point the line of railroad first above described, a distance of one hundred and eighty miles, as near as may be; also a line of railroad from a point on the last above described line, at or near San Miguel in the county of San Luis Obispo, thence in a southerly direction through said county, the county of Santa Barbara, and into the county of Los Angeles to a point of intersection with the line of railroad secondly above described, towit: the line from Tehichipa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river, a distance of two hundred and forty miles, as near as may be, making in all fifteen hundred and nine miles, as near as may be, and such branches to said lines as the board of directors of said new corporation may hereafter from time to time establish.

Article Third. The board of directors of said new corporation shall consist of seven persons, and the following named persons shall act as such directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation hereafter to be adopted, viz: C. P. Huntington, D. D. Colton, Robert Robinson, Charles Mayne, S. T. Gage, E. H. Miller, Jr., and J. L. Willcutt.

Article Fourth. The capital stock of said new corporation shall be ninety million dollars divided into nine hundred thousand shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

Article Fifth. Each stockholder of each of said parties shall have the same number of shares of the capital stock of the new corporation, which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor where the same has been fully paid up, upon the surrender of the certificates now held by him, and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

Article Sixth. And the said several parties of the first and second parts, each for itself, hereby sells, assigns, transfers, grants, bargains, releases and conveys to the said new consolidated company and corporation, its successors and assigns forever, all its property, real, personal and mixed of every kind and description, all its capital stock, all its interest in the shares of its capital stock subscribed, but not fully paid for, all credits, effects, judgments, decrees, contracts, agreements, claims, dues and demands of every kind and description, and all rights, privileges and franchises, corporate and otherwise, held, owned or claimed by said parties of the first and second parts, or either of them in possession or expectancy, either at law or in equity, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, claims and charges thereon or in anywise affecting the same.

Article Seventh. The said new and consolidated company and corporation is to be liable for, and shall fulfill, perform, do and pay all and each of the contracts and agreements, covenants, duties, obligations, liabilities, debts, dues and demands of the said several parties of the first and second parts, but this amalgamation and consolidation shall not in any way relieve the said parties of the first and second parts, or the stockholders thereof, from any and all just liabilities.

In testimony whereof, the said party of the first part has caused this instrument to be signed by its vice-president (the president being absent) and its secretary, and its corporate seal to be thereunto affixed, and the said party of the second part has caused this instrument to be signed by its president and secretary, and its corporate seal thereunto affixed, in pursuance of orders and resolutions of their several boards of directors made on the twelfth day of August, 1873.

SOUTHERN PACIFIC RAILROAD COMPANY,
By DAVID D. COLTON,
Vice-President.
J. L. WILLCUTT,
[Seal] Secretary.

SOUTHERN PACIFIC BRANCH RAILROAD COMPANY,
By B. R. CROCKER,
President.
By E. H. MILLER, Jr.,
[Seal] Secretary.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Railroad Company, party of the first part to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts hereby consent to such amalgamation and consolidation, and to the said new articles of association, this *twenfth* day of August, A. D. 1873.

LELAND STANFORD.
CONTRACT & FINANCE CO.
Per W. E. BROWN,
Secretary.
MARK HOPKINS.
ROBERT ROBINSON.
S. T. GAGE.
CHAS. MAYNE.
DAVID D. COLTON.
J. L. WILLCUTT.
E. H. MILLER, Jr.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Branch Railroad Company, party of the second part, to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation

and to the said new articles of association, this twelfth day of August, A. D. 1873.

LELAND STANFORD.
E. H. MILLER, Jr.
ALBERT GALLATIN.
MARK HOPKINS.
E. W. HOPKINS.
C. H. CUMMINGS.
B. R. CROCKER.

[Endorsed]: Filed in the office of the secretary of state August 19, 1873. Drury Melone, secretary of state. By H. H. Russell, deputy. H. Recorded in Book 4, page 584.

State of California—Department of State.

I, W. C. Hendricks, secretary of state of the State of California, do hereby certify that I have carefully compared the annexed copy of articles of association, amalgamation and consolidation of the Southern Pacific Railroad Company with the Southern Pacific Branch Railroad Company with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the sixteenth day of August, A. D. 1888.

W. C. HENDRICKS,
Secretary of State.
By H. B. Davidson,
Deputy.

[Seal]

[Endorsed]: United States Circuit Court, Southern District of California. United States No. 68 vs. Southern Pacific Railroad Company. Master's Exhibit 102. Filed March 20, 1890. Chas. S. Batchelder, master and examiner in chancery. Opened and filed March 20, 1890. Wm. M. Van Dyke, Clerk. Plaintiffs' Exhibit No. 3. E. H. Lamme, examiner. United States Circuit Court, Ninth Circuit, Southern District of California. United States No. 600 vs. Southern Pacific Railroad Company et al. Plaintiffs' Exhibit No. 7. Leo Longley, special examiner. Filed Nov. 20, 1895. Wm. M. Van Dyke, Clerk, ————, Deputy.

Plaintiff's Exhibit No. 16.

Letter.

F S. S. M.

(4-207 a.) W. C. E.

1890—26565.

" —32050

Department of the Interior.

General Land Office.

Washington, D. C., March 28th, 1890.

I, Lewis A. Groff, commissioner of the general land office, do hereby certify that the annexed copy of a letter from Hon. O. H. Browning, secretary of the interior, dated December 15, 1866, and transmitting to this office the map designating the line of the Atlantic & Pacific Railroad from Springfield, Missouri, to the western boundary of

said State, is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of general land office.

[Seal.]
(9206—1 M.)

L. G. R. R.

Department of the Interior.
Washington, D. C., Dec. 15, 1866.

Sir:

I enclose, herewith, for your information and appropriate official action, a map designating the line of the Atlantic & Pacific Railroad, commincing at the line of Springfield, in the county of Greene, in the State of Missouri, and thence to the western boundary line of said State, and a copy of a letter accompanying the same, from Hon. J. C. Fremont, the president of said road, dated the seventh instant, which were received at this department on the eighth. Please return the map after taking a copy thereof.

I am, sir,
Very respectfully,
Your ob't servant,
O. H. BROWNING,
Secretary.

Hon. Jos. S. Wilson,
Com'r Gen'l Land Office.

[Endorsed]: S. 92,235. Honorable Secretary of Interior. December 15, 1866. Transmitting for appropriate official action a map designating the line of the Atlantic & Pacific Railroad, commencing at the line of Springfield, Mo., to the western boundary of the State.

United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 68. Master's Exhibit 186. Filed April 12, 1890. Chas. L. Batcheller, master and examiner in chancery.

Filed June 12, 1890. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 12. E. H. Lamme, Examiner.

United States Circuit Court, Southern District of California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 11. E. H. Lamme, master and examiner in chancery.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 16. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 17.

Letter.

F. A. W. A. M.

United States of America.

(Vignette.)

Department of the Interior.

Washington, D. C., March 26, 1890.

Pursuant to section 882 of the revised statutes, I hereby certify that the annexed paper is a true copy of the original letter on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed the day and year first above written.

JOHN W. NOBLE,
Secretary of the interior.

[Seal.]

17902 b.—500 (1–480.)

Washington, Nov. 29, 1871.

Hon. Columbus Delano, Secretary of the Interior.

Sir:

I enclose herewith two plats of portions of the route of Atlantic & Pacific Railroad Company, the first showing the definite location of the main line of said road from the western boundary of the State of Missouri to the mouth of Kingfisher creek, in the Indian Territory, and the second showing definite location of the branch line from at or near Van Buren, on the western boundary of Arkansas, to a point in the Indian Territory, on the Canadian river, near the ninety-sixth meridian.

I respectfully ask that said maps be filed in your department as plats definitely fixing the route to the extent therein shown of the main and branch lines of the road of said company, in accordance with the third section of the act of July 27, 1866, by which said company was incorporated.

Very respectfully,
Your ob't servant,
C. J. HILLYER,
Atty. for the Atlantic & Pacific R. R. Co.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co. No. 68. Master's Exhibit 187. Filed April 12, 1890. Chas. L. Batcheller, master and examiner in chancery. Filed June 12, 1890. Wm. M. Van Dyke, Clerk.

12 E. H. L. Plaintiff's Exhibit No. 13. E. H. Lamme, examiner.

United States Circuit Court, Southern District California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 12. E. H. Lamme, master and examiner in chancery.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 17. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 18.

Letter.

F (4—207 a.) S. S. M.
1890—26565 W. C. E.
32050

Department of the Interior.
General Land Office.
Washington, D. C., March 28, 1890.

I, Lewis A. Groff, commissioner of the general land office, do hereby certify that the annexed copy of a letter from Hon. B. R. Cowan, acting secretary of the interior, dated December 1, 1871, and transmitting to this office,

with a map of the branch line, the map showing the location of the main line of the Atlantic & Pacific Railroad, from the western boundary of the State of Missouri to the mouth of Kingfisher creek, in the Indian Territory, is a true and literal exemplification from the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of general land office.

[Seal.]

(9206—1 M.)

Department of the Interior.
Washington, D. C., 1st Dec., 1871.

Sir:

I transmit herewith, for appropriate action, two maps of portions of the route of the Atlantic & Pacific Railroad, one showing the definite location of the main line of said road from the western boundary line of Missouri to the mouth of Kingfisher creek, in the Indian Territory, and the other showing the definite location of the branch line from at or near Van Buren, on the western boundary of Arkansas, to a point in said Indian Territory, on the Canadian river, near the ninety-sixth meridian.

I also send a copy of the letter of twenty-ninth ultimo,

from C. J. Hillyer, Esq., agent, transmitting said map to this office.

Very respectfully,
Your ob't servant,
B. R. COWAN,
Acting secretary.

Hon. Willis Drummond,
Com'r G. L. O.

[Endorsed]: II 72769. Acting Secretary of the Interior. Dec. 1, 1871. Two maps of portions of the Atlantic & Pacific Railroad. F. Dec. 2, 1871.

United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 68. Master's Exhibit 188. Filed April 12, 1890. Chas. L. Batcheller, master and examiner in chancery.

Filed June 12, 1890. Wm. M. Van Dyke, Clerk.

13 E. H. L. Plaintiff's Exhibit No. 14. E. H. Lamme, examiner.

United States Circuit Court, Southern District California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 13. E. H. Lamme, master and examiner in chancery.

United States Circuit Court, Ninth Circuit. Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 18. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 19.

Letter.

F. A. W. A. M.

United States of America.

(Vignette.)

Department of the Interior.

Washington, D. C., March 26, 1890.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original letter on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed the day and year first above written.

JOHN W. NOBLE,
Secretary of the interior.

[Seal.]

17902 b.—500 (1—480.)

Washington, Feby. 3, 1872.

Hon. Columbus Delano, Secretary of Interior.

Sir:

On behalf of the Atlantic & Pacific Railroad Company I herewith transmit for filing in your department certain maps designating the line of the road of said company between the following points:

1st. Map of main line between the mouth of Kingfisher creek, in the Indian Territory, and the eastern boundary line of the territory of New Mexico.

2d. Map of branch line from a point on Canadian river, near ninety-sixth meridian, in Indian Territory, to intersection of said branch with main line.

I also transmit a map which is a duplicate of the map of a portion of the branch line heretofore filed, except that in the former map the parallels of latitude and meridians of longitude were by a clerical error incorrectly laid down, whereas the present map, a copy in other respects, shows the position of these parallels correctly.

I respectfully ask that these several maps may be filed in your department, in compliance with the requirements of the act, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast"; and that the last mentioned map may be considered a substitute for the map already filed of the same portion of branch route.

Very respectfully,

Your ob't servant,

C. J. HILLYER,

Atty. for A. & P. R. R. Co.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 68. Master's Exhibit 189. Filed April 12, 1890. Chas. L. Batcheller, master and examiner in chancery.

Filed June 12, 1890. Wm. M. Van Dyke, Clerk.

14 E. H. L. Plaintiff's Exhibit No. 15. E. H. Lamme, examiner.

United States Circuit Court, Southern District California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 14. E. H. Lamme, master and examiner in chancery.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 19. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 20.

Letter.

F (4—207 a.) S. S. M.
1890—26565 W. E. C.
" —32050

Department of the Interior.
General Land Office.
Washington, D. C., March 28, 1890.

I, Lewis A. Groff, commissioner of the general land office, do hereby certify that the annexed copy of a letter from Hon. C. Delano, secretary of the interior, dated February 6, 1872, and transmitting to this office, among others, the map designating the main line of the Atlantic & Pacific Railroad Company between the mouth of Kingfisher creek, in the Indian Territory, and the eastern boundary of New Mexico, is a true and literal exemplification from the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of general land office.

[Seal.]
(9206—1 M.)

Department of the Interior.
Washington, D. C., 6th Feby., 1872.

Sir:

I transmit herewith for appropriate action, three maps of the Atlantic & Pacific Railroad, designating portions of the line of said road, as follows:

1st. Map of the main line between the mouth of Kingfisher creek, in the Indian Territory, and the eastern boundary line of New Mexico.

2d. One of the branch line from a point on Canadian river (near ninety-sixth meridian), in Indian Territory, to intersection of said branch with main line, and

3d. Duplicate of the map of a portion of the branch line (heretofore filed), being a substitute for the one previously filed.

These maps were received with letter of third instant, from C. J. Hillyer, Esq., attorney for the company.

Very respectfully,
Your ob't servant,
C. DELANO,
Secretary.

Hon. Willis Drummond,
Commr. G. L. O.

[Endorsed]: I. 80,792. Honorable Secretary of the Interior, Feb. 6, '72. 3 maps of the Atlantic & Pacific, designating portions of the line. F. Feby. 7, '72.

United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 68. Master's Exhibit 190. Filed April 12,

1890. Chas. L. Batcheller, master and examiner in chancery.

Filed June 12, 1890. Wm. M. Van Dyke, Clerk.

15 E. H. L. Plaintiff's Exhibit No. 16. E. H. Lamme, examiner.

United States Circuit Court, Southern District California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 15. E. H. Lamme, master and examiner in chancery.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 20. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 21.

Letter.

F. A. W. A. M.

United States of America.

(Vignette.)

Department of the Interior.

Washington, D. C., March 26, 1890.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original letter on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JOHN W. NOBLE,

Secretary of the interior.

[Seal.]

[illegible]2 b.—500 (1—480.)

Hon. Columbus Delano, Secretary of the Interior, Washington, D. C.

Sir:

I herewith forward in behalf of the Atlantic & Pacific Railroad Company the accompanying maps, to be filed in the office of the commissioner of the general land office, towit:

First. Map designating the line or route of the Atlantic & Pacific Railroad from San Francisco to San Miguel Mission, in the State of California.

Second. Map designating the line or route of said railroad from a point on the western boundary line of Los Angeles county, in the State of California, to a point in township 7 (7) north and range 7 (7) east of San Bernardino base and meridian, in said State.

Third. Map showing line or route of said railroad from the eastern boundary line of the territory of Arizona to the Colorado river.

Fourth. Map showing the line or route of said railroad from the western boundary line of the State of Texas to the western boundary line of the territory of New Mexico.

The Atlantic & Pacific Railroad Company respectfully request that the lands embraced in the grant to the company under the provisions of the act of July 27, 1866, and coterminous with those portions of the line or route designated by the plats herewith filed or heretofore filed by said company, may be withdrawn from sale entry of pre-

emption and reserved for said railroad company, according to the provisions of said act.

Very respectfully,

Your ob't servant,

C. J. HILLYER,

Attorney for A. & P. R. R. Co.

March 8, 1872.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 68. Master's Exhibit 191. Filed April 12, 1890. Chas. L. Batcheller, master and examiner in chancery. Filed June 12, 1890. Wm. M. Van Dyke, Clerk.

16 E. H. L. Plaintiff's Exhibit No. 17. E. H. Lamme, examiner.

United States Circuit Court, Southern District California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 16. E. H. Lamme, master and examiner in chancer

United States Circuit Court Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 21. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 22.

Letter.

F (4—207 a.) M. N.
W. C. E.

Department of the Interior.
General Land Office.
Washington, D. C., March 19, 1890.

I, Lewis A. Groff, commissioner of the general land office, do hereby certify that the annexed copy of letter dated April 15, 1874, from the honorable secretary of the interior to the commissioner of the general land office, and the copy of the enclosure which accompanied said letter—being the opinion of the Hon. Walter H. Smith, assistant attorney general, on the subject matter of such letter—are true and literal exemplifications of the same as they appear of record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of general land office.

[Seal.]
(9206—1 M.)

Department of the Interior.
Washington, D. C., 15th April, 1874.

Sir:

On the sixteenth April, 1872, there was transmitted to your office a copy of departmental letter of the eleventh of the same month to Frances B. Hayes, Esq., president of

the Atlantic & Pacific Railroad Company, approving the maps filed by said company, showing the route of the main line of their road through the Indian Territory, Northern Texas, New Mexico, Arizona, and portions of California, to San Francisco.

On the twenty-first of June, 1872, Jas. H. Storrs, counsel of the Southern Pacific Railroad Company of California, submitted, on behalf of said company, an appeal from the action of your office taken pursuant to said departmental letter of sixteenth April, 1872, in ordering a withdrawal of lands for said Atlantic & Pacific Company in California.

The appeal was supported by able and elaborate arguments, denying the right of the said Atlantic & Pacific Company to construct their road to San Francisco.

I deemed it a matter of sufficient importance to take the opinion thereon of the Hon. Walter H. Smith, assistant attorney general, a copy of which will be found herewith.

In view of the reasons assigned therein in favor of the company's having such right, I do not feel at liberty to say that San Francisco is not the most "eligible" point on the Pacific for the terminus of their road. I have, therefore, concluded to adopt the opinion of the assistant attorney general, and decline disturbing your action taken pursuant to said letter of eleventh April, 1872. Be pleased to cause the parties in interest to be furnished

with a copy of this letter and of the opinion. I am, sir, very respectfully

Your ob't servant,

C. DELANO.

Secretary.

Hon. Willis Drummond,

Commr. Gen. Land Office.

Department of the Interior.

Office of Assistant Attorney General.

Washington, March 16, 1874.

I have considered the question of the right of the Atlantic and Pacific Railroad Company to definitely locate the line of its road from the point where it crosses the Colorado river, near the thirty-fifth parallel of latitude, to San Francisco, by way of the Tehachopa Pass, and west of the Coast Range of mountains. The map of definite location was filed in the general land office on the twelfth of March, 1872, and the lands along the route ordered to be withdrawn on the twenty-second of April, 1872.

The Southern Pacific Railroad Company have protested against the route selected by the Atlantic & Pacific Company, and asked for a revocation of the order withdrawing the lands. It claims that the act of July 27, 1866, does not authorize the Atlantic & Pacific to construct a railroad from the crossing of the Colorado river to San Francisco, but does authorize the construction of such a road by its company. It also claims that the question is *res adjudicata*, having once been before the department of the interior, and decided adversely to the Atlantic & Pa-

cific Company. The original bill chartering the Atlantic & Pacific Company provided for a road from Springfield, Missouri, to Albuquerque, on the Del Norte, thence substantially along the thirty-fifth parallel to the Colorado river, and "thence by way of San Gorgonio Pass to San Diego, and by the Tijon Passes and the Tulare and San Joaquin, and their lateral valleys, to the bay of San Francisco." This gave the company the unquestioned right to build two roads from the Colorado river to the Pacific; one terminating at San Diego, and the other at San Francisco. The Senate, for reasons satisfactory to itself, struck out the words above, last quoted, authorizing two routes from the Colorado river, and inserted instead thereof the following: "Thence by the most practical and eligible route to the Pacific"; so that the route as finally adopted by Congress is described as follows: "Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route, as shall be determined by said company, to a point on the Canadian river, thence to the town of Albuquerque, on the River Del Norte, and thence by way of Aqua Frio, or other suitable pass, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado river, at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific."

This language, it seems to me, is free from ambiguity. It takes away the right to make two routes from the Colo-

rado river to the Pacific, and gives the right to make one, and that one is left to the discretion of the company, with the sole qualification that it must be the most practicable and eligible route to the Pacific. If it had stopped with the word practicable, it might be claimed with some plausibility that a route could only be taken which, upon full and careful survey, should be shown to be the most suitable for the construction of a railroad. But it did not stop there; it added the words "and eligible." Eligible means "proper to be chosen," "desirable," "preferable" (Webster); and the act should be construed as though it read, thence by the most practicable and the most desirable route for the company to the Pacific.

Although the route is thus left to the discretion of the company, I apprehend it was not intended that it should have the absolute right to go to the Pacific wherever it pleased, without regard to anything but its mere will and pleasure. It could not go to Puget Sound, or to a point on the Pacific Coast greatly outside of the general course of the line pointed out in the statute. It was given the right to exercise its discretion, but that exercise of discretion must be reasonable.

It must be such as the secretary of the interior can approve when called upon to file the map and withdraw the land, and issue patents. In the case under consideration, I think the company acted reasonably, and exercised the discretion reposed in it in a proper manner. It had to decide where its terminus on the Pacific should be. It was permitted to select the one that was most eligible. It did select San Francisco. Was there on the Coast, in

the general direction of the route of this railroad, any other point equally desirable?

San Francisco is well known to be the great trading point on the Pacific in California. It is the point in which the trade with the East centers. It has a commerce with the world. It is acknowledged to be the best harbor on the coast south of Puget Sound. It has a large city built up by its trade with other sections. There is no other such harbor or city for the company to select.

San Diego is the only one that would suggest itself, and it is much smaller, and has comparatively but little trade, and although it was not, at the passage of the act, it is now the terminus of the Texas Pacific, a road running to the South of the Atlantic & Pacific.

I cannot subscribe to the construction which requires the route to run from the Colorado river "along the thirty-fifth parallel of latitude as near as may be found most suitable" to the Pacific. This qualification in the act relates to the route from the headwaters of the Colorado Chiquito to the Colorado River only. It does not relate to that portion of the route from the Colorado river to the Pacific. The two clauses are not connected with the copulative conjunction "and." They are separated by a semicolon, which, so far as punctuation is concerned, is an indication that they are not to be considered as having the same qualifying terms. In argument it is claimed that they should be so considered because the members of Congress in the debate on the bill so construed the act. The debate was very brief; only one member I believe expressed the opinion referred to. It

is well settled that the language of individual members of Congress cannot be looked to in ascertaining the meaning of a law. In Aldridge v. Williams (3 How. 24) the Chief Justice said, "In expounding the law, the judgment of the Court cannot in any degree be influenced by the construction placed upon it by individual members of Congress in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law, as it passed, is the will of both houses, and the only mode in which that will is spoken is in the act itself, and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed.

My conclusion is that by the terms of the first section of the act of July 27, 1866 (14 Stat. 292) which I have above quoted, the Atlantic and Pacific Company had the right to locate their line from the Colorado river so as to make its terminus on the Pacific at San Francisco, and that as a necessary consequence thereof, it was entitled to the land grant along this route given by the third section of the act in the following words:

" That there be and is hereby granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops and munitions of war and public stores over the route of said line of railway and its branches

every alternate section of public land, nor mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each of said railroad whenever it passes through any States," etc.

It is claimed that although this might be so if the first section stood alone, yet the eighteenth section takes away that right and gives it to the Southern Pacific Railroad. That section is in these words: "That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad formed under this act, at such point near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof to aid in its construction shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

At the time of the passage of this act the Southern Pacific Railroad was, by the terms of its organization, which had been duly filed with the secretary of the State of California, authorized to build a road from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Mon-

terey, San Luis Obispo, Tulare, Los Angeles and San Diego, in said State; "thence eastward through the said county of San Diego to the eastern line of the State of California; thence to connect with the contemplated railroad from said eastern line of the State of California to the Mississippi river." When, therefore, the Southern Pacific Railroad is referred to in said eighteenth section, it means the road that was then required to start at San Francisco, and run thence down the Pacific Coast more than five hundred miles to San Diego. It is this road that is authorized, not required, to connect with the Atlantic and Pacific at such point near the State line as both companies should deem most suitable for a railroad line to San Francisco.

It is optional with it whether to do it or not. If it is done it must be at such point as both companies shall agree upon. Now, was it intended by Congress that the right to go to the Pacific coast, expressly given to the Atlantic and Pacific Company, by the first section, should be taken away and limited to the State line by the eighteenth section of the same act, and that, too, when the Southern Pacific is not even required to connect with the Atlantic and Pacific?

I cannot so construe the law. In my opinion it was not intended that the Atlantic and Pacific should take the long and circuitous route to get to San Francisco that would have been required if it ran on the line of the Southern Pacific as then established. It is true that Congress afterwards, June 28, 1870, authorized a change in the route of the Southern Pacific (16 Stat., 382) and

March 3, 1871, authorized it to connect with the Texas Pacific (16 Stat. 579, sec. 23), but this was done long after the passage of the charter of the Atlantic and Pacific, and cannot be taken in account in ascertaining the meaning of that charter.

The Joint Resolution of June 28, 1870, is, however, material when we consider the question whether the land grant of the Southern Pacific is affected by the present location of the Atlantic and Pacific. The former was located by said Joint Resolution, which was long before the location of the latter, and, therefore, by a well settled rule in your department, will be entitled to the lands where they overlap, and cannot be injuriously affected in its right to the lands given to aid in its construction.

I think the eighteenth section does not take away the right of the Atlantic and Pacific to go to San Francisco and to receive such public lands along its route as may be found thereon of the character described in the third section of the act.

Has this right been taken away by the former action of your department?

In the fall of 1869, the Atlantic and Pacific Company asked to file a map of definite location of the route to San Francisco. On the eleventh of November, 1869, Secretary Cox, in addressing the commissioner of the general land office, said "I cannot recognize the claim of the Atlantic and Pacific Railroad Company to a reservation of lands upon the route in question. The act already cited" (July 27, 1866), "upon which they rely does

not, as I construe it, make them a grant of lands from the point at which the road shall strike the Colorado river to San Francisco. As this is the only point before me, I forbear to express an opinion upon their right to construct a railroad in California, or upon their existing status under the eighth and other sections of the act. I return the map."

I have quoted all that was said on this subject. It must be admitted that it was a very summary disposition of the matter, and it was made before the joint resolution of 1870, and when the Southern Pacific was required to run down the Coast to San Diego, and was simply authorized and not required to connect from the road with the Mississippi river.

Suppose it should never build its road? Can it be that "the act does not make a grant of lands" to the Atlantic and Pacific "from the point at which the road shall strike the Colorado river to San Francisco?" Must the latter company stop at the Colorado, or if it should go beyond, do so without the benefit of any donation in lands? I think not. I cannot therefore approve of the conclusion arrived at by Secretary Cox. That decision was made upon an application to file a map of definite location of a route which is not identical with the present route. The objection that the former action of the department makes the subject res adjudicata is an exceedingly technical one, and it is met with a technical answer. The routes are not identical, and therefore, the question is not conclusively settled. It is not res adjudicata. It is open for such decision as a proper construction of the act justifies.

In my opinion, the action of the department in approving the map, and of the commissioner of the general land office in withdrawing the lands, was just and right and proper, and I advise that it be affirmed.

Very respectfully,

W. H. SMITH,
Ass't Atty. General,

Hon. C. Delano,
Secretary of the Interior.
1890-31596-3.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 68. Master's Exhibit 193. Filed April 12, 1890. Chas. L. Batcheller, master and examiner in chancery. Filed June 12, 1890. Wm. M. Van Dyke, Clerk. 18 E. H. L. Plaintiffs' Exhibit No. 19. E. H. Lamme, examiner.

United States Circuit Court, Southern District California. Southern Pacific Railroad Company vs. Hutton, et als. 305. Examiner's Exhibit, No. 18. E. H. Lamme, master and examiner in chancery.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company, et al.. No. 600. Plaintiff's Exhibit No. 22, Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 23.

F. (4-207 a.) M. N.
W. C. E.

Department of the Interior.
General Land Office.
Washington, D. C., April 4, 1890.

I, Lewis A. Groff, commissioner of the general land office, do hereby certify that the annexed copy of letter dated April 16, 1872, from the acting secretary of the interior to the commissioner of the general land office, transmitting certain copies of departmental letters to Francis B. Hayes (of which there are also copies inclosed) are true and literal exemplifications of the same as they appear of record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of general land office.

[Seal]
(9206-1 M.)

R. R. ds.

Department of the Interior.
Washington, D. C., 16 Apl., 1872.

Sir:

I transmit herewith for your information copies of letters of tenth and eleventh instant, to Francis B. Hayes

Esq:, president of the Atlantic and Pacific Railroad Company, relative to the withdrawal of lands for said road in compliance with law, and the construction of certain sections of the act of incorporation.

Very respectfully,

Your obedient servant,

B. R. COWEN,

Acting Secretary.

Hon. Willis Drummond, Commissioner General Land Office.

Department of the Interior,

Washington, D. C., tenth April, 1872.

Sir:

I am in receipt of your letter of the eighth instant, in which you ask for a construction of the eighth and ninth sections of the act of twenty-seventh July, 1866, incorporating the Atlantic and Pacific Railroad Company.

I have considered the subject referred to, and am of opinion that your company was allowed to commence the work on its road at any time within two years from the passage of the act, but was required to commence *within* that time; that such commencement on the twenty-seventh of July, 1868, would be a compliance with the law; that the amount of road to be constructed within the two years next succeeding the twenty-seventh of July, 1868, was left optional with the company, but that after the expiration of said two years which would be after twenty-seventh July, 1870, you were required to build not less than fifty miles per year.

I think you may build more than fifty miles per year, and that the excess may properly be credited on the work

required for the succeeding year or years. For example: If you had built one hundred miles in the year commencing twenty-seventh July, 1870, you would not have been required to construct any road within the year commencing twenty-seventh July, 1871.

The ninth section does practically enlarge your period of performance for one year, and does not impose any consequences unless the breach has continued "for upwards of one year." A breach continuing for less than a year or for just one year, would not subject the company to the right of the United States to "do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road." Nevertheless, the company will doubtless consult their own interests by carefully taking care that the breach do not continue for the period of one year.

Very respectfully,

Your obedient servant,

B. R. COWEN,
Acting Secretary.

Francis B. Hayes, Esq.,
President of the Company,
Boston, Mass.

Department of the Interior.
Washington, D. C., eleventh April, 1872.

Sir:

In answer to the request contained in your letter of the sixth instant, I have to state that the maps filed at different dates by the Atlantic and Pacific Railroad Company showing the route of the main line of their road through

the Indian Territory, Northern Texas, New Mexico, Arizona, and portions of California to San Francisco, have been examined and approved, and the lands along the line indicated by the maps, will, so far as they are public lands, be withdrawn as soon as the necessary maps therefor can be completed in the general land office. The route to San Francisco, as delineated on the map filed, appears to me to be sanctioned by the terms of the charter of the company, and there is no doubt of their right to construct the road on that line.

I am, sir, very respectfully,

Your obedient servant,

B. R. COWEN,

Acting Secretary.

Francis B. Hayes, Esq.,

President of the Atlantic and Pacific Railroad Company. (Present.)

[Endorsed] United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company, No. 68. Master's Exhibit 194. Filed April 12, 1890. Chas. L. Batcheller, Master and Examiner in Chancery.

Filed June 12, 1890. Wm. M. Van Dyke, Clerk.

19 E. H. L. Plaintiff's Exhibit No. 20, E. H. Lamme, Examiner.

United States Circuit Court, Southern District California, Southern Pacific Railroad Company vs. Hutton et als., 305. Examiner's Exhibit N. 19. E. H. Lamme, Master and Examiner in Chancery.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pa-

cific Railroad Company et al., No. 600. Plaintiff's Exhibit No. 23, Leo Longley, special Examiner. Filed November 19, 1895. Wm. M. Van Dkye, Clerk.

Plaintiff's Exhibit No. 25.

(4—225.) M. N.

"F" C. M. W.

Department of the Interior,
General Land Office.
Washington, D. C., March 7, 1889.

I, S. M. Stockslager, commissioner of the general land office, do hereby certify that the annexed copy is a true and literal exemplification of the letter of the withdrawal of lands for the benefit of the grant to the Atlantic and Pacific Railroad Company, between the points therein named, of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
Commissioner of the General Land Office.

[Seal.]

(8903—500.) (o 6—125)

Refer in reply to this initial:

Department of the Interior,
General Land Office,
Washington, D. C., April 22, 1872.

Register and Receiver, Los Angeles, Cal.

Gentlemen:

I transmit herewith a diagram showing the definite

location of the Atlantic and Pacific Railroad, under act of July 27, 1866, Stat. Vol. 14, p. 292, from a point on the western boundary of Los Angeles county to a point in township 7 north, range 7 east, of the San Bernardino, in your district, showing also the twenty and thirty mile limits of the land grant under said act, and you are hereby directed to withhold from preemption or homestead entry, private sale or location all the *odd*-numbered sections, falling within those limits, both surveyed and unsurveyed, not reserved, sold, granted or otherwise appropriated, and free from preemption, or other claims, or rights at the time the line of said road was designated by filing a plat thereof in this office, which was March 12, 1872.

The even-numbered sections within the twenty-mile limits, you will increase in price to $2.50 per acre, and dispose of them at that ratability and only under the preemption and homestead laws.

The even sections outside of the twenty-mile limits are not affected by this withdrawal. Claims initiated by settlers under the preemption laws prior to the right of the road attaching March 12, 1872, are not affected by this order.

Be pleased to acknowledge the receipt of this letter without delay.

Very respectfully,

WILLIS DRUMMOND,
Commissioner.

[Endorsed]: Plaintiff's Exhibit No. 22. E. H. Lamme Examiner.

United States Circuit Court, Southern District California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 21. E. H. Lamme, Master and Examiner in Chancery.

Filed December 30, 1889. Wm. M. Van Dyke, Clerk, by E. H. Owen, deputy.

Before the Master in Chancery Stipulated Exhibit "E" J. H. C. J. D. R.

United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company, No. 68. Master's Exhibit 129. Filed March 20, 1890. Chas. L. Batcheller, Master and Examiner in Chancery.

United States Circuit Court, Ninth Circuit Southern District of California. United States vs. Southern Pacific Railroad Company et al., No. 600. Plaintiff's Exhibit No. 25. Leo Longley Special Examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 26.

F. (4-225.) M. N.
C. M. W.

Department of the Interior.
General Land Office.
Washington, D. C., July 17, 1889.

I, W. M. Stone, acting commissioner of the general land office, do hereby certify that the annexed copy of letter of April 16, 1874, to the commissioner of the general land office from the secretary of the interior, is a true

and literal exemplification of the same as it appears of record in this department. "

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

W. M. STONE,

Acting commissioner of the general land office.

[Seal]

(8903-500.) (6-125.)

Department of the Interior.

Washington, D. C., 16 April, 1874.

Sir:

Referring to my letter to you of yesterday concerning the route of the Atlantic & Pacific Railroad in California; I transmit herewith two maps designating the line of said railroad in the county of San Bernardino, State of California, and to the east side of the Colorado river, in Arizona Territory; and the line of road in the State of California between the San Miguel Mission and the Los Angeles county line. These maps were received fifteenth August, 1872, with letter of that date, from N. L. Jeffries, Esq., attorney of the company, and are approved by the department.

Very respectfully,

C. DELANO,

Secretary.

Hon. W. Drummond,

Com'r. G. L. O.

[Endorsed]: Plaintiff's Exhibit No. 23, E. H. Lamme, examiner. United States Circuit Court, Southern Dis-

trict California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 22. E. H. Lamme, master and examiner in chancery. Filed August 30, 1889. Wm. M. Van Dyke, Clerk. Before the master in chancery. Stipulated Exhibit "F." I. J. H. C. J. D. R.

United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 68. Master's Exhibit 130. Filed March 20, 1890. Chas. L. Batcheller, master and examiner in chancery.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 26. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 27.

F. (4-207 a.) O. J. D.
W. C. E.

Department of the Interior.
General Land Office.
Washington, D. C., October 25, 1889.

I, Lewis A. Groff, commissioner of the general land office, do hereby certify that the annexed copy of a letter dated April 21, 1871, and addressed to the register, and receiver, Los Angeles, California, is a true and literal exemplification of the original letter of record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of general land office.

[Seal]

(9206-1 M.)

Department of the Interior.
General Land Office.
April 21, 1871.

Register and Receiver,
Los Angeles, California.

Gentlemen:

By act of March 3, 1871, section 23, the Southern Pacific Railroad Co. is authorized to construct a railroad from a point at or near Tehachapa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river with the same grant of lands, etc., as were granted to said company by act of July 27, 1866.

The company having filed a diagram designating the general route of said road, I herewith transmit a map showing thereon the line of route as also the 20 and 30 mile limits of the grant to the line of withdrawal for the Southern Pacific Railroad under the act of 1866, and you are hereby directed to withhold from sale or location, pre-emption or homestead entry all the odd numbered sections falling within those limits.

The even numbered sections within the limit of 20 miles you will increase in price to $2.50 per acre, and will

dispose of them at that price, but only under the pre emption and homestead laws.

Where pre-emption or homestead entries may have hac legal inception prior to the receipt of this order, the set tlers may of course prove their claims either upon odc or even numbered sections at the rate of $1.25 per acre

This order will take effect from the date of its receip by you, and you will please acknowledge receipt by date

The even numbered sections between the 20 and 3(mile or indemnity limits are not affected by this order

Very respectfully,

WILLIS DRUMMOND,

Commissioner.

[Endorsed]: 23 E. H. L. Plaintiff's Exhibit No. 24 E. H. Lamme, examiner. United States Circuit Court Southern District California. Southern Pacific Rail road Company vs. Hutton et als. 305. Examiner's Ex hibit No. 23. E. H. Lamme, master and examiner i chancery. Filed Dec. 30, 1889. Wm. M. Van Dyke, Clerk By E. H. Owen, Deputy.

Case 68. Before the master in chancery. Stipulatec Exhibit "G". J. H. C. J. D. R. United States Circui Court, Southern District of California. United State vs. Southern Pacific Railroad Company. No. 68. Mas ter's Exhibit 132. Filed March 20, 1890. Chas. L. Bat cheller, master and examiner in chancery.

Exhibit "R" referred to in the answer of the Southern Pacific Railroad Company. United States Circuit Court Ninth Circuit, Southern District of California. Unitec

States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 27. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 28.

U. I. J.
M. M. C.

Copy.

Department of the Interior.
Washington.

March 23, 1886.

To the Commissioner of the General Land Office.

Sir:

On the first day of February, 1886, on special reports received from you, a rule was entered on the Atlantic and Pacific Railroad Company "to show cause why so much of the orders of withdrawal, dated the twenty-second day of April, 1872, and the twenty-third of November, 1871, of public land on the alleged line of the railroad of said company from San Buenaventura on the Pacific ocean, to San Francisco, should not be revoked and the land embraced therein restored."

Returnable on the third day of March, 1886, at ten o' clock A. M.

On the fourth day of February, 1886, a copy of the rule was served on Messrs. Britton & Gray, attorneys for the railroad company. In response to which the said company, by its attorney, appeared, and, on the third, on request of the attorneys for the road, final determination of the rule was adjourned till the fourth of March,

1886, when, upon consideration of the law and the evidence, it appears: That the first section of the act of July, 1866, 14 U. S. Statutes, 292, provides for the construction of the railroad and

Page 1. C. L. B.

defines the route as follows:

2.

"Beginning at or near the town of Springfield in the State of Missouri, thence to the western boundary line of said state, and thence, by the most eligible railroad route—as shall be determined by said company—to a point on the Canadian river, thence to the town of Albuquerque on the river Del Norte, and thence, by way of the Agua Frio, or other suitable pass, to the headwaters of the Colorado Chiquito, and thence, along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado river, at such point as may be *be* selected by said company for crossing; thence by the most practicable and eligible route, to the Pacific."

By the third section of the act, a land grant was made to aid in the construction thereof of twenty alternate sections per mile, on each side of the railroad line, as said company may adopt, through the territories of the United States; and ten alternate sections of land per mile on each side of said railroad, whenever it passes through any state.

On the sixteenth day of April, 1874, twelfth day of March, 1872, and the sixteenth day of April, 1874, several respective maps of definite location, of different sec-

tions of the road, were filed, which carried the definite location thereof to San Buenaventura, on the Pacific.
Page 2. C. L. B.
Ocean.

3.

On the twelfth day of March, 1872, and the sixteenth day of April, 1874, maps of definite location of sections of the road, were filed, by which its line of definite location was carried from San Buenaventura to San Francisco. These maps were approved, and in pursuance thereof, the lands in the grant were withdrawn.

On the twenty-sixth day of October, 1869, the company filed a map of definite location, directly from the Colorado river to San Francisco, which the secretary of the interior declined to approve. No portion of the road between San Francisco and San Buenaventura has been built.

By the filing of the several maps of definite location two distinct routes from the Needles, a point near the eastern line of California, to the Pacific ocean, were selected by the company, the northern route reaching the Pacific ocean at San Francisco, the southern at San Buenaventura.

By the filing of maps of definite location on the twelfth day of March, 1872, and the sixteenth day of April, 1874, the line was intended to be established, connecting San Francisco and San Buenaventura. To this portion of the line the rule to show cause applies. The questions necessary to be determined [illegible]

Is there any land granted to the road on this portion of the line? And

Page 3. C. L. B.

4.

if there is no grant is the former action of the department, in accepting the maps of definite location and withdrawing the land from sale, such final action as to now preclude revocation by the department on the principle of res judicata.

On the determination of this rule it is not necessary to decide whether the route claimed by the company in 1869 to San Francisco, or that claimed in 1874 to San Buenaventura, is the legal route of the road, as in either event the same result would follow as both points are on the Pacific ocean. The language of the grant, "To the Colorado river at such point as may be determined by the company for crossing, thence by the most practicable and eligible route to the Pacific."

While this legislation leaves the company, with the approval of the secretary of the interior, to determine what is an eligible and practicable route to the Pacific, it makes the Pacific, when reached, the terminus of the road; and when the Pacific was reached by a route which was selected by the company and approved by the secretary, the terminus was reached and it was beyond the power of either or both to extend the road about three hundred and eighty miles beyond the terminus fixed by law, and increase the grant of the lands by the govern-

ment to that extent. The same assumption of power that could justify the extending of the line in

this case, after the ocean was reached, could have carried it to the northern line of Washington territory or the southern line of California, which certainly was not the intent of the act of 1866. Hence, as there was no power in the officers of the government to thus extend the grant, after the legal terminus of the road had been reached at the Pacific ocean, the acceptance of the maps of definite location between the points described in the rule, was without power and void.

In answer to the principle of res judicata asserted in response to the rule, (with full recognition of the doctrine when applicable) it does not apply in this case.

The principle only exists when the tribunal which renders the decision has jurisdiction of or power over the subject decided. As the only power to approve maps of definite location in this case is conferred by the act of 1886, and that power only extended to the Pacific ocean, when that terminus was reached the power was exhausted, and the approval of all beyond was in excess of the authority of the departmental officers and could have no greater obligatory legal force than should have been accorded to like action by any other person who was not an officer of the department.

To the claim that the line included in the rule has been mortgaged and money raised on its credit, it is a sufficient reply

Page 5. C. L. B.

6.

that the mortgagees could have a lien upon no greater title than the mortgagor, and if, through negligence or a mistake they took a mortgage on that to which the mortgagor had no legal claim, and which reasonable diligence in the examination of the title would have shown them, the misfortune is their own and should not be borne by the nation.

Then, as the legal terminus of the road—whether at San Francisco or San Buenaventura—terminated the grant, there is no occasion longer to reserve the land included in the orders of withdrawal referred to in the rule.

The rule to show cause is made absolute, and, after the publication of the usual restoration notice—which you are hereby directed to give—the land withdrawn between San Buenaventura and San Francisco, will be restored to the public domain. All papers forwarded by you, and those subsequently filed, are herewith transmitted.

(Signed) L. Q. C. LAMAR,
Secretary.

326, 1886.

Page 6. C. L. B.

In the United States Circuit Court, Southern District of California.

I, Chas. L. Batcheller, master and examiner in chancery of the United States Circuit Court, Southern District of California, do hereby certify that the foregoing six pages, are a full true and correct copy of master's Exhibit No. 116 in the case of the United States, complainant, vs. The Southern Pacific Railroad Company, defendant, No. 68, offered and filed in evidence before me, the twentieth day of March, A. D. 1890, and that I have carefully compared the same with the original.

Dated this twenty-first day of March, A. D. 1890.

CHAS. L. BATCHELLER,

Master and examiner in chancery of said Court.

[Endorsed:] United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 68. Master's Exhibit 175. Filed March 21, 1890. Chas. L. Batcheller, master and examiner in chancery. Filed March 22, 1890. Wm. M. Van Dyke, Clerk.

26 E. H. L. Plaintiff's Exhibit No. 27. E. H. Lamme, examiner.

United States Circuit Court, Southern District California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 26. E. H. Lamme, master and examiner in chancery.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Plaintiff's Exhibit No.

28. Leo Longley, special examiner. Filed Nov. 19, 1895, Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 29.

Refer in reply to this initial: V. H. O. W. J. D. J. W. L.

F.
1886
34310

Department of the Interior.
General Land Office.
Washington, D. C., April 8, 1886.

Register and Receiver,
Los Angeles, California.

Gentlemen:

I herewith enclose copy of decision of the honorable secretary of the interior, dated March 23, ult., wherein he decides that the Atlantic and Pacific Railroad Company has no grant of lands in California between San Francisco and San Buena Ventura, and directs that lands heretofore withdrawn for the benefit of said company between the points named be restored to the public domain after the usual published notice.

A diagram is transmitted herewith, showing the limits of the withdrawal between said points, so far as the same lies within your district. The lands situated *west* of the *red line* drawn perpendicular to the point marked

San Buena Ventura, on said diagram, are those affected by the honorable secretary's decision.

Page 1.

C. L. B.

You hereby directed to restore to entry under the pre-emption and homestead laws, at the rate of $1.25 per acre, and under the timber-culture, desert land, and timber and stone land laws if of a character subject to such laws, all the odd-numbered sections and parts of sections of public land west of said red line. In order to carry the above instructions into effect, you will cause to be published in the newspaper having the largest circulation in your district, a notice that upon a day to be fixed by you, and not less than thirty days from the date of the notice, not less than thirty days from the date of the notice, the lands to be restored will become subject to entry as above.

A copy of the paper containing this notice should be promptly forwarded for the information of this office.

The receiver, as disbursing officer, will pay the cost of publication, and should forward a copy of the notice with proof of publication, as his voucher for the disbursement.

The price of the even numbered sections and parts of sections west of said red line, is reduced to $1.25 per acre, but the same will not be subject to private cash entry.

Very respectfully,

Wm A. J. SPARKS,

Commissioner.

Page 2.

C. L. B.

[Endorsed]: F., April 8, 1886. Atlantic and Pacific Railroad Company. Restoration of odd numbered sections. Filed April 20, *1886.* Notice published April 21, 1886, of reciption of filings on and after June 1, 1886.

Page 3.

C. L. B.

In the United States Circuit Court, Southern District of California.

I, Chas. L. Batcheller, master and examiner in chancery of the United States Circuit Court, Southern District of California, do hereby certify that the foregoing three pages, are a full, true and correct copy of master's Exhibit No. 117 in the case of the United States, complainant, vs. the Southern Pacific Railroad Company, defendant, No. 68, offered and filed in evidence before me on the twentieth day of March, A. D. 1890, and that I have carefully compared the same with the original.

Dated this twenty-first day of March, A. D. 1890.

CHAS. L. BATCHELLER,

Master and examiner in chancery of said court.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. N. —. Master's Exhibit 176. Filed March 21, 1890. Chas. L. Batcheller, master and examiner in chancery. Filed March 22, 1890. Wm. M. Van Dyke, Clerk.

27 E. H. L. Plaintiff's Exhibit No. 28. E. H. Lamme, examiner.

United States Circuit Court, Southern District California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 27. E. H. Lamme, master and examiner in chancery.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 29. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 30.

Certificate to Map.

M. N.

F. (4-207 a.) C. M. W.

Department of the Interior.

General Land Office.

Washington, D. C., January 19, 1889.

I, Thos. J. Anderson, acting commissioner of the general land office, do hereby certify that the annexed map is a true and literal exemplification of a diagram on file in this office, showing the limits of the grant to the Atlantic and Pacific Railroad Company, in Los Angeles Land District, with the intersecting limits of the grant to the Southern Pacific Railroad Company. Main and branch lines.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington on the day and year above written.

T. J. ANDERSON,

Acting commissioner of general land office.

[Seal]

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Plaintiff's Exhibit No. 31.

Letter.

(4-225.) M. N.

"F" C. M. W.

Department of the Interior.

General Land Office.

Washington, D. C., Jan. 19, 1889.

I, Thos. J. Anderson, acting commissioner of the general land office, do hereby certify that the annexed copy is a true and literal exemplification of the acceptance by the Atlantic and Pacific Railroad Company of the act of Congress, approved July 27, 1866.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

T. J. ANDERSON,

Acting commissioner of the general land office.

[Seal]

(8903-500.) (o 6-125.)

Office of the Atlantic & Pacific Railroad Company.

No. 54 William St.

New York City, Nov. 23, 1866.

Hon. O. H. Browning,

Secretary of the Interior,

Washington City, D. C.

Sir:

In compliance with the requirements of section 12 of an act of Congress entitled, "An act granting lands to aid in the construction of a railroad and telegraph line

from the States of Missouri and Arkansas to the Pacific ocean," approved July 27, 1866, we have the honor of transmitting to you herewith the resolution of the board of directors of the Atlantic and Pacific Railroad Company, accepting "the terms, conditions, and impositions" of said act.

We have the honor to be

Respectfully, your obedient servants,

J. C. FREMONT,

Prest. A. & P. R. R. Co.

Chas. H. Howland,

Sec'y. A. & P. R. R. Co. (Atlantic and Pacific)

Railroad Company, 1866)

New York City, Nov. 22, 1866.

At a meeting of the board of directors of the Atlantic and Pacific Railroad Company, held this day, it was "Ordered that the acceptance by the Atlantic and Pacific Railroad Company of the terms, conditions and impositions of the act passed by Congress entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific ocean' 'approved July 27 1866,' be signified in writing under the corporate seal of the company, and that the president and secretary authenticate such acceptance and signification, and cause the same to be deposited in the office of the secretary of the interior, and that for all purposes the provisions of said act be deemed and taken to be accepted by the company."

[Endorsed]: United States Circuit Court, Southern District California. United States vs. Southern Pacific

Railroad Company et al. 184. Master's and examiner's Exhibit No. 30. E. H. Lamme, master and examiner in chancery, for plaintiff. Filed Feb. 23, 1894, Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Company et al. No. 600. Plaintiff's Exhibit No. 31. Leo. Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 32.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, vs. THE SOUTHERN PACIFIC RAILROAD COMPANY et al.	Nos. 67, 68 & 69. Consolidated by Order of Court.

Certified copies of certain papers filed in case Nos. 67, 68 and 69, consolidated, United States vs. Southern Pacific Railroad Company et al. (Plaintiff's Exhibit 31. Before Examiner Lamme in case No. 184, viz:

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY OF KENTUCKY; LEWIS H. BIXBY; H. J. PARKS; CLARA E. CUMBERLAND; THOMAS S. OLDHAM; O. MORGAN; THE POMONA LAND AND WATER COMPANY; L. L. BRADBURY; H. M. CRAMPTON; CARLTON SEAVES; STODDARD JESS; ELIAS FINK; CHARLES N. PECK; S. W. MOORE; GEORGE D. RIPLEY; C. C. JOHNSON; WILLIAM S. HENDERSON; FRANK JOHNSON; GEORGE RHORES; CASSIE L. FOSS AND JOSEPH HINKELL,

Defendants.

Nos. 67, 68 & 69. Consolidated by Order of Court.

SECOND AMENDED BILL OF COMPLAINT.

To the Judges of the Circuit Court of the United States for the Southern District of California:

The United States of America, by the attorney general thereof, brings this, its second amended bill, against

the Southern Pacific Railroad, a corporation organized and existing as hereinafter set forth; The Pomona Land and Water Company, a corporation organized and existing under the laws of California: The Southern Pacific Company of Kentucky, a corporation organized and existing under the laws of Kentucky, and owning and operating a railroad in this judicial district; Lewis H. Bixby; H. J. Parks; Clara E. Cumberland; Thomas S. Oldham; O. Morgan; L. L. Bradbury, H. M. Crampton; Carlton Seaves; Stoddard Jess; Elias Fink; Charles N. Peck; S. W. Moore; George D. Ripley; C. C. Johnson; William S. Henderson; Frank Johnson; George Rhores; Cassie L. Foss and Joseph Hinkell, each a resident and a citizen of the State of California.

And thereupon your orator complains and alleges: that on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of the Southern Pacific Railroad Company, and under a general law thereof approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto, with the corporate name of the Southern Pacific Railroad Company." Said act is printed in the Statutes of California, 1861, at page 607, and sections 2, 3, 17 (divisions first, second and seventh) 18, 40 and 43, are as follows, towit:

Chapter DXXXII. "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto."

"The People of the State of California, represented in Senate and Assembly, do enact as follows:

"Section 1. ——."

"Sec. 2. The said articles of association shall set forth the name of the incorporation, the number of years the same is to continue in existence, which shall not exceed fifty years, the amount of capital stock of the company, which shall be divided into shares of one hundred dollars each, and which shall be the actual contemplated cost of constructing the road, together with the cost of the right of way, motive power, and every other appurtenance and thing for the completion and running of said road, as nearly as can be estimated by competent engineers, the names and number of the directors to manage the affairs of the company, who shall hold their office until others are elected, as shall be provided by the by-laws of the company, the place from and to which the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length as near as may be. Each subscriber to such articles of association shall personally subscribe thereto, his name, place of residence, and the number of shares of stock taken by him in such company, provided, that in case a person desirous of becoming a subscriber, but compelled to be absent from the State at the time of subscribing to such articles of association, he having paid the ten per cent required by law upon his subscription, may sign the same by written proxy or power of attorney, to that effect; and there shall be endorsed, or attached to the said articles so subscribed an affidavit, made by any three of the directors

named therein, setting forth in substance that said amount of stock has been subscribed, and that ten per cent in cash thereon has actually and in good faith been paid in as aforesaid, and that the subscribers to said articles are all known by one or the other, of the said three directors to be subscribers thereto, and to be the persons so represented."

"Sec. 3. Articles of association formed in pursuance of the provisions of the foregoing sections shall be filed in the office of the secretary of state, and thereupon the persons who have, or may, subscribed the same, and all persons who may, from time to time, become stockholders in such company, shall be a body politic and corporate, by the name stated in such articles of association, and shall be capable in law to make all contracts, acquire real and personal property, purchase, hold, convey any and all real and personal property whatever necessary for the construction, completion, and maintenance of such railroad, and for the erection of all necessary buildings and yards, or places and appurtenances for the use of the same, and be capable of suing and being sued, and have a common, or corporate, seal, and make and alter the same at pleasure, and generally to possess all the powers and privileges for the purpose of carrying on the business of the corporation, that private individuals and natural persons now enjoy. A copy of any articles of association filed in pursuance of this act, and certified to be a copy by the secretary of state, or his deputy, shall, in all courts and places, be presumptive evidence of the incorporation of such company, and of the facts stated therein; and such a copy, so certified

shall be kept in the office of the secretary of the corporation, subject to examination during office hours by any person."

"Sec. 17. Every railroad corporation shall have power:

"First. To cause such examinations and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for the railroad, and for such purpose, by their officers, agents and employees, to enter upon the lands, or waters, of any person, but subject to responsibility for all damages which they shall do thereto.

"Second. To receive, hold, take, and convey, by deed, or otherwise, the same as a natural person might, or could, do, such voluntary grants, and donations of real estate, and other property of every description, as shall be made to it, to aid and encourage the construction, maintenance and accommodation of such railroad."

"Seventh: To purchase lands, timber, stone, gravel or other materials to be used in the construction and maintenance of its road, or take them in the manner provided by this act; may change the line of its road, in whole, or in part whenever a majority of the directors shall so determine, as is provided hereinafter; but no such change shall vary the general route of such road, as contemplated in the articles of association of such company."

"Sec. 18. If at any time after the location of the line of such railroad, in whole, or in part, and the filing of the map thereof, as provided by this act, it shall appear to the directors of such company that the same

may be improved, such directors, may, from time to time, alter, or change, the line, in any manner they may think proper, and cause a new map to be filed in the office where the map showing the first location is filed, and may thereupon take possession of the land embraced in such new location, that may be required for the construction and maintenance of such new road on such new line, either by agreement with the owner, or owners, of such lands, or by such proceedings as are authorized under the provisions of this act, and use and enjoy the same in place of the line for which the new is substituted; but nothing into this act shall be so construed as to confer any powers on such companies to so change their road as to avoid any point named in articles of association, except as provided in section 17, subdivision 7, of this act."

"Sec. 40. It shall be lawful for two, or more, railroad companies to amalgamate and consolidate their capital stock, debts, property, assets, and franchises in such manner as may be agreed upon by the board of directors of such companies so desiring to amalgamate and consolidate their interests; but no such amalgamation, or consolidation, shall take place without the written consent of three-fourths of the value of all stockholders in interest of each company, and no such amalgamation, or consolidation, shall, in any way, relieve such companies, or the stockholders thereof, from any and all just liabilities; and in case of such amalgamation, or consolidation, due notice of the same shall be given, by advertising, for one month, in at least one newspaer in each county, if there shall be one published therein, into, or

through, which such roads shall run, and also for the same length of time, in one paper published in Sacramento, and two papers published in San Francisco, and when the consolidation and amalgamation is completed, a copy of the new articles of association shall be filed in the office of the Secretary of State. It shall be the duty of the railroad company to make and maintain a good and sufficient fence on either, or both, sides of their property; and in case any company do not make and maintain such fence, if their engine, or cars, shall kill, maim, or destroy, any cattle or other domestic animals, when they stray upon their line of road, where it passes through, or alongside of, the property of the owner thereof, they shall pay to the owner, or owners, of such cattle, or other domestic animals, a fair market price for the same, unless the owner, or owners, of the animal, or animals, so killed, maimed or destroyed, shall be negligent, or at fault. In any case where the railroad company have heretofore, or may hereafter, pay to the owner, or owners, of the land through which, or alongside of which, their road is, or may be, located, an agreed price for making and maintaining such fence, or whenever the costs of such fence have been, or may be, included in the award of damages allowed and paid for the right of way for such railroad, such company shall be entirely relieved and exonorated from all claims, or awards, of damages arising out of the killing, or maiming, any animals as aforesaid, in favor of all persons, or their successors, or assigns, who shall thus fail to construct and maintain such fence. And the owner, or owners, of such animals shall become responsible to the railroad company for any

damage, or loss, which may accrue to such company, from such animals being upon their railroad track, by reason of the non-construction of such fence by said owner, unless it can be proven that such loss, or damage, accrued by reason of the negligence of said company, its officers, agents, or employes."

"Sec. 43. Every railroad company in this State shall, within a reasonable time after their road shall be finally located, cause to be made a map and profile thereof, and the land taken and obtained for the use thereof, and the boundaries of the several counties through which said road may run, and file the same in the office of the secretary of state, and also, like maps of the parts thereof located in different counties, and file the same in the office of the clerk of the county in which said parts of said road shall be, there to remain as of record forever. The said maps and profiles shall be certified by the chief engineer, the acting president, and secretary of such company; and copies of the same so certified and filed as aforesaid, shall be kept in the office of the secretary of the company, subject to examination by all parties interested."

Said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, of constructing, owning and maintaining a railroad from some point on the bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego, to the town of San Diego, in said State; thence eastward, through said county of San Diego, to the eastern line of the State of California, there to con-

nect with a contemplated railroad from the eastern line of the State of California to the Mississippi river.

Your orator further shows that on October 11, 1870, under and by virtue of the said general laws of the State of California, authorizing two or more railroad companies to consolidate and amalgamate their capital stock, debts, property, assets and franchises, said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, a railroad corporation then organized and existing under the laws of California, and the Santa Clara and Pajaro Valley Railroad Company, also a railroad corporation then organized and existing under the laws of California, did pretend to consolidate and amalgamate their capital, stock, debts, property, assets, and franchises, making a different capital, issuing new *d*tock and creating a new and different corporation under the name and style of the Southern Pacific Railroad Company.

On the twenty-seventh day of July, 1866, Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast by the Southern Route," which was approved on that day. The said act is printed in the fourteenth volume of the United States Statutes at Large, at page 292; and sections 3, 4, 6, 8, 9, 11, 12, 13, 17, 18 and 20 of said act are hereinafter set forth.

On the twenty-fourth day of November, 1866, the board of directors of the said Southern Pacific Railroad Company, at a meeting held in the city of San Francisco, in

the State of California, on that day, passed a resolution reciting the act last above entitled, and resolved to accept the same and the terms, conditions, and impositions contained in said act, and accordingly, on the thirtieth day of November, 1866, the secretary of said company transmitted to the secretary of the interior a certified copy of the said resolution of the board of directors, under the seal of the company, accepting the terms and conditions of said act of Congress of July 27, 1866, which certified copy was on the twenty-seventh day of December, 1866, duly filed with the secretary of the interior.

That on March 1, 1870, the legislature of California passed an act, entitled "An act relating to certificates of incorporation," which act was approved on said date; that said act is in the words and phrases as follows, towit:

"Section 1. Any corporation now or hereafter organized under the laws of this State, may amend its articles of association or certificate of incorporation, by a majority vote of the board of directors, or trustees, and by a vote or written assent of the stockholders representing at least two-thirds of the capital stock of such corporation; and a copy of the said articles of association or certificate of incorporation, as thus amended, duly certified to be correct by the president and secretary of the board of directors, or trustees of such corporation, shall be filed in the same office, or offices, where the original articles or certificate are required by law to be filed; and from the time of filing such copy of the amended article, or certificate, such corporation shall have the same powers,

and it and the stockholders thereof shall be thereafter subject to the same liabilities as if such amendment had been embraced in the original articles or certificate; provided, that the time of the existence of such corporation shall not be thereby extended beyond the time fixed in the original articles or certificate; and provided further, that such original and amended articles or certificate shall, together, contain all the matters and things required by the law under which the original articles of association or certificate of incorporation were executed and filed; and provided further, that nothing herein contained shall be construed to cure or amend any defect existing in any original certificate of incorporation heretofore filed, by reason of the failure of such certificate to set forth the matters required by law to make the same valid as a certificate of incorporation at the time of the filing thereof; also provided, that unless the vote or written assent of all the stockholders has been obtained, then a notice of the intention to make such amendment shall first be advertised for sixty days, in some newspaper published in the town or county in which the principal place of business of said company is located; and the written protest of any one of said stockholders, or his duly authorized agent or attorney, whose assent has not been obtained, filed with the secretary of the said company, shall, unless withdrawn, be effectual to prevent the adoption of such amendment; provided, that nothing in this act shall be construed to authorize any corporation to diminish its capital stock."

"Section 2. This act shall take effect and be in force from and after its passage."

On April 4, 1870, the legislature of California passed an act as follows: "Whereas, by the provisions of a certain act of Congress of the United States of America, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the State of California,' approved July 27, 1866, certain grants were made to and certain rights, privileges, powers, and authorities were vested in and conferred upon the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the State of California; therefore, to enable the said company to more fully and completely comply with, and perform the requirements, provisions, and conditions of the said act of Congress, and all other acts of Congress now in force, or which may hereafter be enacted, the State of California hereby consents to said act; and the said company, its successors and assigns are hereby authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the State of California by such route as the company shall determine to be the most practicable, and to file new and amendatory articles of association, and the right, power, and privileges hereby granted to, conferred upon, and vested in them, to construct, maintain, and operate, by steam or other power the said railroad and telegraph line mentioned in said act of Congress, hereby confirming to and vesting in the said company, its successors and assigns, all the rights, privileges, and franchises, power and authority conferred upon, granted to, or vested in said company by the said acts of Congress, and any act of Congress which may be hereafter enacted."

That on April 15, 1871, in pursuance of the said general acts of the legislature of California, approved March 1, 1870, the said Southern Pacific Railroad Company filed its amended articles of association in the same office where the originals are required by law to be filed, which articles are as follows:

"Whereas, by an act of the legislature of the State of California, entitled 'An act relating to certificates of incorporation,' approved March 1, 1870, any corporation then organized, or thereafter to be organized under the laws of the State of California, is authorized and empowered to amend its articles of association, or certificate of incorporation, by a majority vote of the board of directors or trustees, and by a vote or written assent of the stockholders representing, at least, two-thirds of the capital stock of such corporation.

"And whereas, by a certain other act of the legislature of the State of California, entitled 'An act to aid in giving effect to an act of Congress, relating to the Southern Pacific Railroad Company,' approved April the 4th, 1870, to enable the said company to more fully and completely comply with, and perform the provisions, requirements, and conditions of an act of Congress of the United States of America, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the State of California,' approved July 27, 1866, and of all other acts of Congress then in force, or which might thereafter be enacted, the said Southern Pacific Railroad Company, its successors and assigns, were authorized and empowered to change

the line of its railroad so as to reach the eastern boundary line of the State of California, by such route as said company might determine to be most practicable, and to file new and amendatory articles of association.

"And whereas, by an act of Congress of the United States of America, entitled 'An act to incorporate Texas Pacific Railroad Company and aid in the construction of its road, and for other purposes,' approved March 3, 1871."

"The said Southern Pacific Railroad Company was authorized, subject to the laws of California, to construct a line of railroad from a point at or near Taheechaypah Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, with the same grants, rights, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company by an act of Congress entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast,' approved July 27, 1866."

"And whereas, said Southern Pacific Railroad Company desires to secure to itself the grants, rights, and privileges conferred upon it by said acts of the Congress of the United States, and to that end to amend and alter its articles of association, as provided in the foregoing acts of the legislaure of the State of California, so as to include in its line of railroad and telegraph the line or route designated in the aforesaid act of Congress of March 3, 1871, towit: The line from a point at or near

Taheechaypah Pass, by way of Los Angeles to the Texas Pacific Railroad, at or near the Colorado river."

"And whereas, on the eleventh day of April, 1871, at a meeting of the board of directors of said company, held at San Francisco, the principal place of business of said company, it was determined by a unanimous vote of said board that the articles of association of said company be amended as aforesaid."

"And whereas, at the same time and place, at a meeting of the stockholders of said company, at which stockholders of said company holding more than two-thirds of the capital stock of said company were present, and did vote unanimously in favor of amending the articles of association of said company as aforesaid, and did also unanimously vote to increase the capital stock of said company to the sum of seventy millions of dollars, to meet the increased cost of the construction and equipment of said railroad."

"Now, therefore, the board of directors of said Southern Pacific Railroad do ordered and direct that the articles of association of said company be amended so as to read as follows:"

"Articles of Association, Amalgamation, and Consolidation.

"Made and executed on this the eleventh day of October, A. D. 1870, by and between the San Francisco and San Jose Railroad Company, of the first part, the Santa Clara & Pajaro Valley Railroad Company, of the second part, the Southern Pacific Railroad Company, of the third part, and the California Southern Railroad Company, of the fourth part, witnesseth:

"That whereas, the said party of the first part was heretofore, towit, on the eighteenth day of August, 1860, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, maintaining, and operating a railroad from the city of San Francisco, in the county of San Francisco, in said State, through said county and the counties of San Mateo and Santa Clara, to the city of San Jose, in said last-named county, a distance of forty-eight miles."

"And whereas, the said party of the second part was heretofore, towit, on the second day of January, 1868, duly incorporated and organized under the laws of said State, for the purpose of constructing, owning, maintaining, and operating a railroad from a point at or near the city of San Jose, in the county of Santa Clara and State aforesaid, connecting at said point with the railroad of the said party of the first part, and to pass thence to a point at or near the town of New Gilroy, in the same county, a distance of thirty miles."

"And whereas, the said party of the third part was heretofore, towit, on the second day of December, 1865, duly incorporated and organized under the laws of said State, for the purpose of constructing, owning, maintaining, and operating a railroad from some point on the bay of San Francisco, in said State, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Kern, Los Angeles, and San Diego, to the town of San Diego, in said State; thence eastward through the county of San Diego, to the eastern boundary line of said State, a distance of seven hundred and twenty miles, as near as may be, there to connect wtih a contemplated

railroad from said eastern boundary line of said State to the Mississippi river, and has received large grants of land from the government of the United States to aid in the construction and equipment of said road."

"And where— the said party of the fourth part was heretofore, towit, on the twenty-second day of January, 1870, duly incorporated and organized under the laws of said State, for the purpose of constructing, owning, and maintaining a railroad from a point at or near the town of Gilroy, in the county of Santa Clara, in said State, and to pass through the counties of Santa Clara, Santa Cruz, and Monterey, to a point at or near the town of Salinas City, in said last-named county, a distance of forty-five miles, as near as may be."

"And whereas, said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, lands, and franchises will be mutually advantageous."

"And whereas, more than three-fourths in value of all the stockholders in interest of each of said parties have consented, in writing, to such amalgamation and consolidation, upon the terms and conditions hereinafter set forth."

"Now, therefore, under and by virtue of the statute of the State of California, in such case made and provided, the said parties do hereby mutually covenant and agree, each with each and all the others, to the following articles, towit:"

"Article 1. Said parties do hereby amalgamate and consolidate themselves into a new corporation, under the name and style of the Southern Pacific Railroad Com-

pany, which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever, as well in possession as in expectancy, at law or in equity, and do grant, convey, and vest the same in said new corporation, as fully as the same are now severally held and enjoyed by them, or either of them, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, claims and charges thereon, or in anywise affecting the same."

"Articles 2. The object and purpose of said new corporation shall be to purchase, construct, own, maintain, and operate a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado river, in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Taheechaypah Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county, and the counties of Santa Cruz and Monterey, to a point at or near Salinas City, in said last-named

county, a distance of forty-five miles, as near as may be; also such branches to said lines as the board of directors of said new corporation may hereafter consider advantageous to said corporation, and direct to be established."

"Article 3. The board of directors of said new corporation shall consist of seven persons, and the following named persons shall act as such directors until their successors shall have been duly elected, pursuant to the by-laws of said new corporation hereafter to be adopted, viz., Lloyd Tevis, Leland Stanford, Charles Crocker, C. P. Huntington, Mark Hopkins, Charles Mayne, and Peter Donahue."

"Article 4. The capital stock of said new corporation shall be seventy million dollars, consisting of seven hundred thousand shares, of one hundred dollars each, that sum being the contemplated actual cost of said railroads including telegraph lines, rolling stock, motive power, shops, depots, etc."

"Article 5. Each stockholder of each of said party shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him, and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct, upon the surrender of such evidence of his ownership of such unpaid stock of his respective company as he may now hold."

"Article 6. Said new corporation shall assume and perform all the contracts, agreements, covenants, duties, and obligations of what kind soever, of each of said parties, and shall pay and discharge all debts, claims, and demands existing against either and all of said parties; but nothing herein contained shall release the said parties or either of them or their stockholders or any of them, from any of their just liabilities."

"In testimony whereof, the said Southern Pacific Railroad Company, by its board of directors, has caused these articles to be signed and countersigned by its president and *and* secretary, and its corporate seal to be hereunto affixed, on this the eleventh (11) day of April, 1871."

"SOUTHERN PACIFIC RAILROAD COMPANY,
By Charles Crocker,
President.
J. L. Willcutt,
Secretary."

[Seal]

And your orator alleges that all the provisions of said law were fully complied with in order to give effect to said new articles of association and of said amendments.

Your orator further alleges that on the twelfth day of August, 1873, under and by virtue solely of the law of the State of California of May 20, 1861, before referred to authorizing the amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company organized in 1870 as aforesaid, the California Southern Railroad Company and the Southern Pacific Branch Railroad Company, each organized and

then existing railroad companies under and by virtue of the laws of California, did pretend to amalgamate and consolidate their capital stock, debts, property, assets, and franchises, creating a new capital stock and issuing new certificates of stock and canceling the old ones and creating a new and different corporation by the name and style of the Southern Pacific Railroad Company, a copy of which new articles of association and incorporation are hereto attached marked "Exhibit A. B." and all the provisions of said law were fully complied with in order to give effect to said new articles of incorporation.

Your orator further shows the Court that on July 27, 1866, Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, by the Southern route." To which said act your orator has heretofore referred, and that sections 3, 4, 6, 9, 11, 12, 17, 18, and 20 of said act are as follows:

"Sec. 3. And be it further enacted, that there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors, and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sec-

tions of lands per mile on each side of said railroad whenever it passes through any State; and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office, and whenever, prior to said time, any of said sections, or parts of sections, shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the secretary of the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have heretofore been granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act; provided, further, that the railroad company receiving the previous grant of land may assign their interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate, and associate with said company, upon the terms named in the first and seventeenth sections of this act; provided, further, that all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof—a like quantity of unoccupied and unappropriated agricultural

lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided; and further provided, that the word "mineral," when it occurs in this act, shall not be held to include iron or coal; and provided, further: that no money shall be withdrawn from the treasury of the United States to aid in the construction of the said "Atlantic and Pacific Railroad."

"Sec. 4. And be it further enacted: That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the secretary of the interior, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report, under oath, to the President of the United States, and patents of land, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company, conveying the

additional sections of lands as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid."

"Sec. 6. And be it further enacted: That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this act, but the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled, 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be and the same are hereby extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company."

"Sec. 9. And be it further enacted: That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time thereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road."

"Sec. 11. And be it further enacted: That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other government service, and also subject to such regulations as Congress may impose restricting the charges for such government transportation."

"Sec. 12. And be it further enacted: That the acceptance of the terms, conditions, and impositions of this act by the said Atlantic and Pacific Railroad Company shall be signified in writing, under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards, and shall be deposited in the office of the secretary of the interior."

"Sec. 17. Be it further enacted: That the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid or assistance which may be granted to, or conferred on, said company by the Congress of the United States by the legislature of any State, or by any corporation, person, or persons, or by any Indian tribe or nation, through whose reservation the road herein provided for may pass, and said corporation is authorized to hold and enjoy any such grant, donation, loan, power, franchise, aid, or assistance to its own use for the purpose aforesaid; provided, that any such grant or donation, power, aid or assistance from any Indian tribe or nation shall be subject to the approval of the President of the United States."

"Sec. 18. And be it further enacted: That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this Act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco; and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided; and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

"Sec. 20. And be it further enacted: That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times, but particularly in time of war, the use and benefits of the same, for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend, or repeal this act."

"Approved July 27, 1866."

Your orator further alleges that by and pursuant to said act of Congress, the Atlantic and Pacific Railroad Company was created and duly organized, and on November 23, 1866, within the time and in the manner provided in said act, accepted said grant, and did designate the

line of its route from Springfield, Missouri, to the Pacific by maps and plats thereof which it filed in the office of the commissioner of the general land office in manner following, towit:

On or about March 9, 1872, said company filed in the office of the commissioner of the general land office maps designating the line of its route and showing the general features of the country and vicinity as follows:

First: From San Francisco to San Miguel Mission in California.

Second: Map of its route from San Miguel Mission via Santa Barbara and San Buena Ventura to a point in township 2 south, range 17 west, San Bernardino base and meridian in California.

Third: Map of its route from said point last mentioned to a point in twonship 7 north, range 7 east, San Bernardino base and meridian in California.

Fourth: Map of its route from said point last named to the Colorado river, and thereafter, on or about March, 1872, said company filed in said office as aforesaid its several other maps, designating its route from said point last named to Springfield in the State of Missouri, making all together a continuous line designating its entire route and showing the general features of the country from said town of Springfield, Missouri, by way of the points named in said act of Congress of July 27, 1866, to the Pacific At San Buena Ventura, and from there to San Francisco, and in the manner provided in said act, and such designation was accepted by the United States.

Your orator alleges that said several parts of its map,

filed as aforesaid, made and constituted the entire route or line of said Atlantic and Pacific Railroad Company fully designating the whole thereof.

Your orator alleges that on March 9, 1872, and on April 22, 1872, the secretary of the interior and the commissioner of the general land office respectively ordered all the odd sections of land within thirty miles on each side of said designated route of said Atlantic and Pacific Railroad Company reserved from sale and withdrawn.

Your orator alleges that said Atlantic and Pacific Railroad Company did construct and complete a portion of its road west of Springfield, Missouri, in the time and manner required by said act, but did not at any time construct or complete any railroad west of the Colorado river.

Your orator further shows that by the act of Congress approved July 6, 1886, entitled: "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, resumed, and restored to entry for non-completion of that portion of said railroad to have been constructed in California.

Your orator alleges that the Southern Pacific Railroad Company, which is defendant herein, is not the same Southern Pacific Railroad Company which was organ-

ized and incorporated under said articles of amalgamation and consolidation, dated October 11, 1870, and amended April 11, 1871, as heretofore set forth, but is the now existing Southern Pacific Railroad Company created as aforesaid.

Your orator further shows the Court that, by section 23 of an act of Congress approved March 3, 1871, entitled "An act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas & Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at near Tehachapa pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866."

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

Said Southern Pacific Railroad Company, the corporation which existed on April 3, 1871, as heretofore shown, pretended to accept said grant on April 3, 1871, and did on that day designate the line of its said road by a plat thereof, which it filed in the office of the commissioner of

the general land office, and thereupon the secretary of the interior ordered all the public lands in odd sections within 30 miles of such route, to which no right or claim had attached, to be withdrawn from market and reserved.

And your orator alleges that the Southern Pacific Railroad Company which was organized and created on August 12, 1873, by the pretended articles of amalgamation and consolidation of said several railroad companies as heretofore set forth did construct and complete a railroad from Tehachapa pass by way of Los Angeles to the Colorado river in the manner and within the time prescribed in said act of Congress, in which the Southern Pacific Railroad Company therein named was authorized and empowered to do; and thereafter the commissioners appointed under said act for that purpose did unlawfully make and file their alleged acceptance of the whole of said railroad by sections. And there was not, and is not now, any railroad or part thereof constructed or completed under said act or between said points otherwise than as aforesaid.

Your orator alleges that the lands hereinafter described were acquired from Mexico by your orator in 1846 and confirmed by the Treaty of Guadalupe Hidalgo in 1848, and were then and at all times since have been public lands of the United States, not mineral, to which the United States have at all times had full title and have not been patented, reserved, sold, granted, appropriated, and —— free from all claims and rights and occupancy, except as shown in this bill of complaint.

The said tracts being described as follows, to wit: North of base line and west of San Bernardino meridian,

Los Angeles district, township one, range eight,——— west half of section thirty-one containing three hundred and twenty-one acres and sixty-hundredths of an acre. ——— All of section twenty-nine containing six hundred and forty acres. The south half of section thirty-three, containing three hundred and twenty acres. All of section thirty-five, containing six hundred and forty acres. North of base line and west of San Bernardino principal meridian, California, township one, range nine, and north half of the southwest quarter of section twenty-seven, containing eighty acres.

Your orator further shows that the general routes of said Atlantic and Pacific Railroad Company and of said Southern Pacific Railroad Company under said Act of March 3, 1871, as said routes were located as aforesaid, cross each other in the State of California as will more particularly appear from the annexed map marked "Exhibit B. B."

Your orator further shows: that on the south side of said route of the Atlantic and Pacific Railroad Company within thirty miles of said route but also within twenty miles of the pretended designated route of the Southern Pacific Railroad Company, there was not on July 27, 1866, nor on March 12, 1872, nor on April 3, 1871, and is not now enough public land in the odd sections to equal in amount ten (10) alternate sections per mile of the line of road of said Atlantic and Pacific Railroad Company, within such limits, for that prior to said date of July 27, 1866, the Mexican government and the United States had sold, granted, reserved, and otherwise disposed of so great a quantity of land in those limits.

Your orator further alleges that all of the said lands before described are situated on the south side of the said designated route of the Atlantic and Pacific Railroad Company more than twenty miles but less than thirty miles therefrom, but are less than twenty miles from the said pretended designated route of said Southern Pacific Railroad Company.

Your orator further shows that on or about March 27, 1837, Ignacio Palomares and Ricardo Vejar presented a petition to Juan B. Alvarado, governor of Upper California, under the Mexican government, for a grant for the place known by the name of San Jose.

Thereupon said matter was properly investigated and such grant was duly made by Juan B. Alvarado, then governor ad interim of California, on April 15, 1837, to said Palomares and Vejar for the place called San Jose, in conformity with the plat attached to the petition and within the boundaries therein expressed.

Thereafter, and on or about December 16, 1839, one Louis Arenas and said Ignacio Palomares and Ricardo Vejar presented their petition to the prefect of the district for a grant of the land called San Jose, ceded by the decree of April 1, 1837, and one additional league of grazing land.

Thereupon, upon investigating such matter, and on March 14, 1840, Juan B. Alvarado, then constitutional governor of the department of the Californias, granted said land so petitioned for by Arenas, Palomares and Vejar, and as fully shown by the diseno referred to in their said petition; and thereafter said grant was duly

confirmed by the Departmental Assembly of Upper California, and judicial possession was given for said land to the said Luis Arenas, Ignacio Palomares, and Ricardo Vejar; a copy of said grant and map being hereto attached marked "Exhibit C. C." and a translation marked "A. C."

Your orator further shows that on or about September, 1852, Henry Dalton, Ignacio Palomares, and Ricardo Vejar each severally filed his claim for confirmation of one-third of the place called San Jose, granted to them as aforesaid, with the board of land commissioners, pursuant to the Act of Congress of March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and thereafter, on or about January 31, 1854, the said board of land commissioners rendered and entered its three several decrees therein, confirming to each of said claimants the land applied for and described as aforesaid.

Thereafter, the United States duly appealed from each of said decrees of confirmation to the United States District Court for the Southern District of California, which said court did, upon the trials and hearings of said appeals, and on or about December term, 1854, of said court, render and enter its separate decrees therein in each case and affirming the three said decrees of the board of land commissioners, confirming to said Henry Dalton, Ricardo Vejar, and Ignacio Palomares, and to each, "an equal undivided one-third part of the lands of San Jose granted by Juan B. Alvarado, governor of California, to Ignacio Palomares and Ricardo Vejar, on

April 15, 1837, and regranted by said governor on March 14, 1840, to said Palomares and Vejar and to Louis Arenas, as described in the grant first mentioned and the map to which the same refer*d* and which boundaries fully appear from the —— Act of Judicial Possession" described as follows: "Commencing at the foot of a black willow tree which was taken for a corner, and between the limbs of which a dry stick was placed in the form of a cross; thence westerly nine thousand seven hundred (9,700) varas to the foot of the hills called 'Las Lomas de La Puente,' taking for a landmark a large walnut tree on the slope of a small hill on the side of the road which passes from the said 'San Jose' to the Puente, making a cut (caldure) on one of the limbs with a hatchet; thence northerly ten thousand four hundred (10,400) varas to the creek (arroyo) of San Jose *a*pposite a high hill where a large oak was taken as a boundary in which was placed the head of a beef and some of its limbs chopped; thence easterly ten thousand six hundred (10,600) varas to the creek (arroyo) of San Antonio, taking for a landmark two young cottonwoods which stand near each other, on the bark of which crosses were made; thence southerly nine thousand seven hundred (9,700) varas to the place of beginning."

Your orator further shows that each of said decrees of said district court become final, by the dismissal of the appeal which had been taken therefrom.

Your orator further shows that the surveyor general of the United States for California, having the power and authority under the law in that behalf to locate, to survey, to reserve, and to segregate from the public domain

all Mexican grants, and sufficient lands to satisfy such grants, did in the year 1868, so locate, survey, and segregate said San Jose grant, and did so locate, survey, and *seregate* sufficient land to satisfy such grant, and included in such survey and Rancho as a part thereof all the lands in suit herein as hereafter set forth.

That pursuant to such authority and under the direction of and in behalf of said surveyor general, one George H. Thompson, deputy United States surveyor, did, in August, 1868, so survey, locate, and segregate such Ranch, including therein the amount of land to satisfy such Rancho, and including therein as a part thereof all the lands in suit herein; and thereafter, in the same year, such survey was duly approved by said surveyor general, and such survey was thereafter spread upon the records and plats of the general land office, and of the office of said surveyor general.

Your orator alleges that a certain alleged survey was made of said San Jose Rancho by Henry Hancock, a United States deputy surveyor, in October and November, 1858, which was approved by the United States surveyor general for California, J. W. Mandeville, January 4, 1860, but up to September 18, 1868, said Hancock survey had not become complete or final or effective because it had not been published nor advertised nor approved by the commissioner of the general land office and was wholly inoperative as a legal survey or segregation of the land.

In the meantime and before said Hancock survey had become operative or legal the Act of Congress approved

July 23, 1866, entitled "An act to quiet titles in California," had become operative, which said act provided as follows:

Sec. 8. "That in all cases where a claim to land by virtue of a right or title derived from the Mexican or Spanish authorities has been finally confirmed and a survey and plat thereof, shall not have been requested within ten months . . . . it shall be the duty of the surveyor general of the United States for California, as soon as practicable after the expiration of ten months from the passage of this act, ... to cause the lines of the public surveys to be extended over such land, and he shall set off in full satisfaction of such grant and according to the lines of the public surveys the quantity of land confirmed in such final decree as nearly as can be done in accordance with such decree, and all lands not included in such grant as so set off, shall be subject to the general land laws of the United States."

And your orator alleges that there was no such request by such claimants for a survey ever made or filed nor did they ever deposit in the United States District Court any money to pay for such survey nor for a plat thereof.

Your orator alleges that after the said surveyor general had approved said Thompson survey of August, 1868, under said Act of July 23, 1866, and after it had become final under said act without being advertised and without the approval of the commissioner of the general land office, and in the year 1869 the said surveyor general caused said Hancock survey to be advertised as provided in the act of Congress approved July 1, 1864, but said Hancock survey was never approved by the commissioner

of the general land office as required by said Act of July 1, 1864, or any other act, and never became effective.

Your orator further shows that on or about November 13, 1869, the said surveyor general transmitted to the commissioner of the general land office the said alleged Hancock survey of 1858, and said Thompson survey of 1868, together with a report in reference thereto.

Your orator alleges that on June 17, 1871, the commissioner of the general land office duly considered said report and said Thompson survey and said alleged Hancock survey and did order both to set aside and a new survey made, and up to said date of June 17, 1871, said Thompson survey was *sub judice* and reserved the land therein, a certified copy of said commissioner's decision of June 17, 1871, being hereto attached marked "Exhibit B. C." and made a part hereof together with ten (10) papers referred to therein, each marked "D."

Your orator alleges that the lands in suit herein were not embraced in said alleged Hancock survey of 1858, but were all embraced in the boundaries to the grant of Alvarado, governor, to the said Palomares, Vejar, and *Aranas* of 1840, heretofore referred to, and were claimed as a part thereof.

Your orator further shows that subsequent to June 17, 1871, the said surveyor general for California made another survey of said San Jose Rancho and upon which the United States did, on January 20, 1875, issue its patent therefor to said Henry Dalton, Ricardo Vejar and Ignacio Palomares as so finally surveyed, which patent was duly accepted by said claimants, and which said

patent and final survey did not include any of the lands in suit herein.

Your orator further shows that on March 29, 1876, April 4, 1879, and December 27, 1883, respectively, the commissioner of the general land office did, inadvertently and without any authority of law, issue three certain patents for the above described lands to the Southern Pacific Railroad Company and did procure the signature of the president of the United States thereto and of the recorder of the general land office, who signed said patents without any authority of law. Copies of said pretended patents are hereto annexed and made a part hereof, being marked "Exhibits A, B, and C."

Your orator alleges upon information and belief that the defendants herein claim an interest in the lands in suit herein, described in said pretended patents under and through said pretended patents, and not otherwise, but the nature and extent of such claims are unknown to your orator, and your orator asks that defendants each answer fully disclosing the nature and extent thereof.

Your orator alleges that defendants and neither of them have any title or interest in or to said lands, legal or equitable, for that said pretended patents under which defendants solely claim title were issued inadvertently, without authority, and were at their inception and still are each void and inoperative to pass title, and that said lands were never granted to said Southern Pacific Railroad Company, defendant herein, but are still owned by the plaintiff.

Your orator further shows that the amount in controversy herein exceeds the sum or value of $5,000, exclusive of interest and costs.

Your orator further shows that on the sixteenth day of August, 1887, the secretary of the interior of the United States, on behalf of the plaintiff and in accordance with law, did demand from the defendant, the Southern Pacific Railroad Company, a relinquishment to the United States of its claim to all the lands described in said pretended patents and a return of said patents, which the said railroad company refused and still refuses to so relinquish to the plaintiff and refuses to return said patents.

Your orator refers to the several acts of Congress relating to public lands and to private land claims, to the several acts and joint resolutions of Congress relating to the Atlantic and Pacific Railroad Company, the Southern Pacific Railroad Company, the Texas and Pacific Railroad Company, and to the surveys, plats, and public records of the office of the surveyor general for California, and of the general land office, relating to the several grants to said railroad companies, and to said Mexican grant of said San Jose rancho.

In tender consideration whereof, and for as much as the plaintiff is remediless at and by the strict rules of the common law, and can only be relieved in a court of equity, your orator prays that the defendants be required to bring said pretended patents into court, and that they may each be canceled by the court, and be decreed to be null and void and of no effect.

Your orator further prays that its title to said lands described in said pretended patents may be quieted, and that the defendants, and each of them, be forever enjoined *fro* from asserting or claiming any right or title thereto adverse to the plaintiff, and such other and further relief as the court may deem equitable in the premises.

May it please your Honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this Honorable Court to be directed to the Southern Pacific Railroad Company, the Southern Pacific Company of Kentucky, Lewis H. Bixby, H. J. Parks, Clara E. Cumberland; Thomas S. Oldham; O. Morgan; The Pomona Land and Water Company; L. L. Bradbury; H. M. Crampton; Carlton Seaves; Stoddard Jess; Elias Fink; Charles N. Peck; S. W. Moore; George D. Ripley; C. C. Johnson; William S. Henderson; Frank Johnson; George Rhores; Cassie L. Foss and Joseph Hinkell, commanding them each on a certain day and under a certain penalty therein to be inserted to be and appear before your Honors and then and there to answer the premises and further to stand and abide such order and decree therein as shall be agreeable to equity and good conscience, and your orator will ever pray.

W. H. H. MILLER,
Attorney General of the United States.

JOSEPH H. CALL,
Special Assistant United States Attorney, Southern District of California, and of Counsel for plaintiff.

[Endorsed]: Nos. 67, 68, and 69. In the Circuit Court of the United States, Ninth Circuit, Southern District of

California. The United States of America vs. Southern Pacific Railroad Company et al. Second Amended Bill. Filed November 22, 1889. Wm. M. Van Dyke, Clerk. Jos. H. Call, solicitor for plaintiff.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY OF KENTUCKY, LEWIS H. BIXBY, H. J. PARKS, CLARA E. CUMBERLAND, THOMAS S. OLDHAM, O. MORGAN, THE POMONA LAND AND WATER COMPANY, L. L. BRADBURY, H. M. CRAMPTON, CARLTON SEAVES, STODDARD JESS, ELIAS FINK, CHARLES N. PECK, S. W. MOORE, GEORGE D. RIPLEY, C. C. JOHNSON, WILLIAM S. HENDERSON, FRANK JOHNSON, GEORGE RHORES, CASSIE L. FOSS and JOSEPH HINKELL,

Defendants.

Nos. 67, 68 & 69. Consolidated by order of the Court.

ANSWER OF THE SOUTHERN PACIFIC RAILROAD COMPANY IN CONSOLIDATED CASE NO. 68.

And now comes the Southern Pacific Railroad Com-

pany, one of the defendants in the above-entitled cause, and for answer to the second amended bill filed herein by W. H. H. Miller, attorney general of the United States, on leave of the Court on the twenty-second day of November, A. D. 1889, against it and the other defendants above-named, and making answer to said bill and to so much thereof, as it is advised is material, and now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto or to so much and such parts thereof, as this defendant is advised is material or necessary for it to make answer unto, answering says:

I.

It admits that on or about the second day of December, 1865, a corporation was organized under the laws of the State of California, by the name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," and this defendant admits the sections two (2), three (3), seventeen (17), eighteen (18), forty (40), and forty-three (43) as set forth in said bill.

This defendant admits that the said corporation, "The Southern Pacific Railroad Company," was formed for the purpose and with the corporate powers stated in said bill.

II.

This defendant admits that on the eleventh day of Oc-

tober, A. D. 1870, under and by virtue of the general laws of the State of California, the Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, the Santa Clara and Pajaro Valley Railroad Company (with the California Southern Railroad Company), corporations organized under the laws of California, were consolidated and amalgamated under the name of the Southern Pacific Railroad Company.

III.

This defendant admits that on the twenty-seventh day of July, 1866, Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," which was approved on that day, and is found in the fourteenth volume of the United States Statutes, page 292, and following, and admits that the said corporation, the Southern Pacific Railroad Company, accepted the terms, conditions, and imposition of said act, and filed a duly certified copy of said acceptance in the office of the secretary of the interior, at Washington city, within the time required by law.

IV.

This defendant admits that on March 1, 1870, the legislature of the State of California passed an act "relating to certificates of incorporation," which was approved on said date, and that the said act is correctly set forth in the plaintiff's bill.

And also admits that on the fourth day of April, 1870, the legislature of the State of California, passed "An Act

to aid in giving effect to an Act of Congress relating to the Southern Pacific Railroad Company," and that said act is correctly quoted and set forth in the plaintiff's said bill.

And the defendant also admits that the said Southern Pacific Railroad Company, in pursuance and under authority of said enactment of the legislature of the State of California, approved March 1, 1870, filed in the office of the secretary of State of said State of California, on the fifteenth day of April, A. D., 1871, amended articles of association and incorporation, which said amended articles it admits are correctly set forth in the plaintiff's said bill, and it also admits that the provisions of the laws were fully complied with in order to give effect to said amended articles of association.

V.

This defendant admits that on or about the twelfth day of August, A. D. 1873, under and by virtue of the laws of the State of California, the Southern Pacific Railroad Company and the Southern Pacific Branch Railroad Company, each organized and then existing as railroad corporations under the laws of California, did amalgamate and consolidate themselves into a corporation under the name and style of the Southern Pacific Railroad Company, and that a true copy of the articles of association and incorporation are found in exhibits A and B attached to said amended bill, and admits also that all the provisions of law have been complied with in order to give effect to said articles of amalgamation and consolidation.

VI.

This defendant admits that the Congress of the United States passed an act which was approved on the twenty-seventh day of July, A. D. 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and that sections three (3), four (4), six (6), nine (9), eleven (11), twelve (12), seventeen (17), eighteen (18), and twenty (20) are correctly quoted and set forth in the said bill.

VII.

This defendant admits that by and under said last-mentioned Act of Congress, the Atlantic and Pacific Railroad Company was created and organized, and did duly accept the provisions of the said law within the time and in the manner provided in said act, but it denies that said Atlantic and Pacific Railroad Company did designate the line of its route from Springfield, in the State of Missouri, to the Pacific Coast, as required by said act.

This defendant denies that on the ninth March, 1872, or at or about any such time, the Atlantic and Pacific Railroad Company filed in the office of the commissioner of the general land office, maps designating the line of its route, or otherwise in accordance with law, and denies that on or about the ninth March, 1872, said Atlantic and Pacific Railroad Company filed four maps in the office of the commissioner of the general land office, as stated in said bill. Said company filed two maps and claimed that they were filed for the purpose of

locating parts or fragments of a line for its road in the State of California, but the defendant denies that said maps constitute a valid location of said road in California. Certified copies of said maps are annexed to the answer heretofore filed in this suit by this defendant, and marked Exhibit "A," Nos. 1 and 2, which, with the indorsements thereon, are now herein referred to and made part of this answer; and this defendant says that said railroad was not located or attempted to be located on or about March 9, 1872, or at any such time in California, either in whole or in part otherwise than aforesaid by said maps. This defendant denies that the Atlantic and Pacific Railroad Company, by or through the filing of said maps, acquired the right to any lands of the United States lying opposite to the lines or route marked on said maps, and denies that said company acquired the right to select any public lands along said routes or lines as "other lands" in lieu of sections within twenty miles that had "been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of" by the United States.

These maps were sent to the general land office by the secretary of the interior with a letter dated March 9, 1872, of which a certified copy is annexed to said answer heretofore filed, marked "Exhibit B."

This defendant says that the lands mentioned in the amended bill herein lie opposite to the line of route marked on the said map, designated in said letter as No. 2 of a portion of the proposed road of the Atlantic and Pacific Railroad Company, that is, a piece of road within

the State of California. "From a point on the western boundary line of Los Angeles county, California, to a point in township seven (7) north, range seven (7) east, of San Bernardino meridian in said State."

Neither, when filed in March, 1872, nor at any such time, did it appear that said map represented any part of a line that was or was intended to be conjoined to any other part located before that time for the Atlantic and Pacific Railroad.

VIII.

Further answering, this defendant says that the Atlantic and Pacific Railroad Company afterwards, viz: on the thirteenth day of August, 1872, filed in the department of the interior, two other maps which it claimed were intended to designate the line of other fragments or portions of the railroad in California. Certified copies of said maps, and of the letter of the secretary of the interior of April 16, 1874, in respect thereto, are annexed to the answer filed heretofore in this suit by this defendant, marked Exhibit "C," Nos. 1 and 2, and are now herein referred to and made part of this answer. And this defendant denies that said maps constituted a valid location of the parts or fractions of road therein described, and denies that the four maps hereinbefore mentioned of four several parts of the road constituted a valid location of the said Atlantic and Pacific Railroad in California. And it denies that the said Atlantic and Pacific Railroad was ever in any otherwise lawfully located in the State of California. The grant of lands by the said Act of Congress of July 27, 1866, hereinbefore mentioned

was made to aid in the construction of a railroad "Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route as shall be determined by said company to a point on the Canadian river; thence to the town of Albuquerque, on the river Del Norte, and thence by the way of the Agua Frio or other suitable pass, to the head waters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado river, at such point as may be selected by said company for crossing; thence, by the most practicable and eligible route to the Pacific." (14 Stats., 292). And the defendant says that there is nothing in or upon said maps to identify the same as the line of road mentioned in the said Act of Congress.

And this defendant says, that it was further provided by said act as follows, that is to say:

"Sec. 18. And be it further enacted, that the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regu-

lations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

And that the construction of a railroad from the Colorado river to San Francisco was expressly relegated and appropriated to this defendant, and the said Atlantic and Pacific Railroad Company was never authorized to construct any such line of railroad or to acquire any lands by reason of or in respect of the construction, or proposed construction, of any such line.

IX.

And this defendant denies that on or about March, 1872, the said Atlantic and Pacific Company filed in the office of the commissioner of the general land office, maps designating its route from the Colorado river to Springfield, in the State of Missouri, and denies that said maps made altogether the line of railroad from Springfield, in the State of Missouri, to the Pacific Coast, which was provided for and required by said act of Congress of July 27, 1866, to be constructed and completed by the said Atlantic and Pacific Railroad Company, and denies that the several parts of its map filed, made and constituted the whole of its line as provided for in said act of Congress. The said parts of its map, when taken together, showed a line terminating at San Francisco, which was not the terminus provided for by said act of Congress.

X.

This defendant denies that on March 9, 1872, and April 22, 1872, or at any such times the secretary of the interior and the commissioner of the general land office

ordered all the odd sections of land within thirty miles on each side of the designated route of the said Atlantic and Pacific Railroad Company reserved from sale and withdrawn.

About that time the commissioner of the general land office, viz., on the twenty-second of April, 1872, ordered lands withdrawn for 30 miles on each side of the parts of lines of route attempted to be located March 9, 1872, by the two maps hereinbefore mentioned as filed March 9, 1872. The orders of the commissioners were addressed to the register and receiver of the United States land office at San Bernardino, Los Angeles and Visalia, and were substantially as shown by the certified copy of the commissioner's letter of said date to the officers at Los Angeles, hereto annexed marked "Q" and made part of this answer. The defendant denies that said orders of April 22, 1872, had any effect whatever upon the rights and grants of this defendant, and here refers to the fact that they were intended only to take effect upon public lands not reserved, sold, granted or otherwise appropriated at the time of filing said maps, towit, March 12 (9th?) 1872.

This defendant avers that the lands involved in this suit had previously, on the third of April, 1871, by the filing of the map of definite location of the defendant's railroad, been duly reserved from sale by and under the said twenty-third section of the act of Congress of March 3, 1871, and the 6th section of the act of Congress of July 27, 1866, which said sections are quoted in the bill of complaint herein, and avers also that said lands

had been duly withdrawn from market and appropriated for the use of this defendant by the order of the commissioner of the general land office to the register and receiver of the United States land office at Los Angeles, issued April 21, 1871, a copy of which is hereto annexed, marked "R," and made a part of this answer.

This defendant admits that said Atlantic and Pacific Railroad Company did construct and complete a portion of its road west of Springfield, Missouri, in the time and manner required by said act, but did not at any time construct or complete any railroad west of the Colorado river.

XI.

This defendant admits the enactment of a law of the United States, approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement, and for other purposes," and that thereby the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, but denied that they were thereby "resumed" and "restored to entry" and because of the manifest insufficiency of the statement of the provisions of said law in the bill of the plaintiff, the entire statute is now referred to by this defendant. Stat. at Large, Vol. 24, p. 123.

XII.

Traversing the allegation in the plaintiff's bill, that the Southern Pacific Railroad Company, the defendant

herein, is not the same Southern Pacific Railroad Company which was organized and incorporated under articles of amalgamation and consolidation, dated October 11, 1870, and amended April 11, 1871, as in said bill set forth, this defendant says that it is the same company, and that the changes and amendments made from time to time in its articles and organization have been made in accordance with the laws of the State of California.

This defendant avers that it is the same Southern Pacific Railroad Company that is mentioned in the act of Congress of the twenty-fifth of June, 1868, 15th volume of Statutes, p. 79, and in the act of the twenty-fifth of July, 1868, volume of Statutes, 15th volume, p. 187, and in the Joint Resolution of Congress of June 28, 1870, tenth volume of United States Statutes, p. 382, and in the twenty-third section of the act of March 3, 1871, sixteenth United States Statutes, p. 579, which is as follows:

"Sec. 23. That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California, is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866. Provided, however, that this section shall in no way affect or impair the rights, pre-

sent or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

Approved March 3, 1871.

This defendant avers that on the third of April, 1871, it designated the line of its said railroad, as described in said section 23, by a map thereof filed in the office of the commissioner of the general land office, and thereupon the said commissioner ordered all the public lands in odd sections within thirty miles of such route to be withdrawn from market. Certified copy of the map filed by this defendant in the office of the commissioner of the general land office, is annexed to the answer heretofore filed by this defendant, marked Exhibit D, and the same is now referred to and made part of this answer.

This defendant avers that it is the same railroad company that constructed the railroad provided for in said twenty-third section of said act of Congress of March 3, 1871, and that it fully constructed and completed its road according to said act, and the constructed and completed its road according to said act, and the construction thereof, has been accepted and approved by the President of the United States, construction of the last mile of said road having been accepted by President Hayes on the twenty-third of January, 1878.

This defendant hereto annexes, and makes part of this answer, certified copies of five several reports of the secretary of the interior to the President of the United States, and of the indorsements thereon made by the President upon the same, marked Exhibit S, No. 1, No. 2, No. 3, No. 4, and No. 5, and this defendant denies that the commissioners appointed for that purpose did "un-

lawfully make and file their alleged acceptance of the whole of said railroad by sections."

The commissioners, in accordance with law, made and filed their reports, and the same were accepted by the secretary of the interior and the President of the United States, and this action of the secretary and President is binding upon the United States, and its validity cannot be called in question in this action.

This defendant denies that the following lands at all times since their acquisition from Mexico, "have been public lands of the United States," and denies that the United States has full title thereto at this time, said lands being described as follows: North of the base line and west of San Bernardino meridian in township one (1),

The west one-half of section 31,.....321.60 acres
All of section 29,.....640.00 acres
The south one-half of section 33,.....320.00 acres
All of section 35,.....640.00 acres

In township one (1).
Range nine (9).
The north one-half of the southwest one-quarter, section 27,..... 80.00 acres

2001.60

This defendant admits that the line attempted to be located for the Atlantic and Pacific Railroad in California, crosses the line of the Southern Pacific Railroad, located under the act of March 3, 1871, but denied that the defendant's location was upon the same general line as that of the Atlantic and Pacific Railroad Company;

it denies that any valid location of the Atlantic and Pacific Railroad was or could be on the same general line as the authorized and located and constructed line of this defendant. It denies that the lands involved in this suit are situated opposite to portions of said routes which are upon the same general line and, to support such denial, refers to the certified copy of the location of the route of the Southern Pacific Railroad of California, made under the act of March 3, 1871, and filed in the office of the commissioner of the general land office, April 3, 1871, with the letter of the acting secretary of the interior of that date, annexed to the answer heretofore filed, marked exhibit "D," Nos. 1 and 2, and now referred to and made part of this answer.

And this defendant alleges that when its line of route was located on the third day of April, 1871, it was demonstrated and found that said route was not upon the line of the Atlantic and Pacific Railroad, or upon the line of any other railroad route, to aid in the construction of which lands had been granted by the United States; and that under and by virtue of said act of March 3, 1871, and the map of location filed on the third day of April, 1871, the lands described in said patents were reserved for and appropriated to this defendant, whose title thereto has become perfect and complete by the construction of its road as prescribed in said act.

That the said Atlantic and Pacific Railroad Company's pretended line was not located until subsequent to the year 1871; that when sought or pretended to be located,

it was and was found to be on a wholly unauthorized route, not prescribed or permitted under any act of Congress in relation to or affecting said Atlantic and Pacific Railroad Company.

This defendant admits that on the south side of the pretended location of the Atlantic and Pacific road, and within 30 miles thereof, but also within 20 miles of the location of the Southern Pacific Railroad, there was not on April 3, 1871, and is not now, enough public land in the odd sections to equal ten (10) alternate sections per mile on each side of the pretended location of the line of said Atlantic and Pacific Railroad Company, within such limits, and this defendant admits that the above-described tracts of land are situated more than 20 miles, and less than 30 miles from the line of pretended location of the Atlantic and Pacific Railroad, and less than 20 miles from the said located line of the Southern Pacific Railroad.

This defendant avers that said tracts of land have been granted by the said twenty-third section of the act of March 3, 1871, to it, the Southern Pacific Railroad Company.

XIII.

Further answering, this defendant admits that on or about March 14, 1840, a grant of land was made by Juan B. Alvarado, the governor of the department of the Californias, to Louis Arenas, Ignacio Palomares and Ricardo Vejar for the place or land called San Jose, with an additional league of grazing land, and that under the act of Congress of March 3, 1851 (9 Stat. 633) said lands

were duly confirmed by the United States District Court for the Southern District of California, in the years 1855, 1856 and 1857, one undivided third thereof to Henry Dalton, one undivided third part to Ignacio Palomares, and one-third part to Ricardo Vejar, by separated decrees in cases No. 121, 122 and 128 on the docket of said Court; and this defendant admits that said confirmations were entered with like terms and descriptions of said lands in the decrees of confirmation, and that the boundaries of the Rancho or place called San Jose, so confirmed, as stated in the amended bill of complaint, are substantially correct.

And this defendant admits that said decrees of confirmation became final, and alleges that the decree in No. 121 became final April 4, 1857, by dismissal of the appeal that had been taken therefrom.

XIV.

This defendant, further answering, denies that the surveyor general of the United States for California did, in the year 1868, "under the law in that behalf," locate, survey and segregate said San Jose grant so as to satisfy said grant and denies that said surveyor general had legal authority in 1868 to survey and set off said lands from the lands of the United States.

This defendant denies that a certain survey made by one George H. Thompson in August, 1868, was made with due authority of law, or under legal and valid instructions issued to him for that purpose by the United States surveyor general for California. And this defendant denies that the said survey by Thompson was "duly

approved" by the surveyor general, and denies that the same was spread upon the records and plats of the general land office. The said survey, made by said Thompson, included a large quantity of public lands of the United States that had never been granted by the Mexican authorities to said Arenas, Palomares and Vejar, and, among other public lands, the tracts above-described were wrongfully included in said Thompson survey.

XV.

This defendant avers that a regular survey of said San Jose Rancho was made by Henry Hancock, United States deputy surveyor, in October and November, 1858, which was approved by the United States surveyor general for California, J. W. Mandeville, January 4, 1860; the plat of said survey was advertised, in accordance with section one of the act of Congress, approved June 14, 1860, in regard to the survey and location of confirmed private land claims in California (12 Stat. 33) as appears from the certified copy of the plat of said survey and indorsements thereon, which are annexed to the answer of this defendant, heretofore filed, marked Exhibit E, which are now referred to and made part of this answer; and the said survey as approved by said Surveyor General Mandeville had been officially transmitted to the commissioner of the general land office at Washington, and in August, 1868, was pending for examination by the said commissioner of the general land office, and for patent thereon, under said act of Congress of June 14, 1860, and the defendant says that the United States surveyor general for California had not jurisdiction under those

circumstances to make another survey of said Rancho San Jose in August, 1868, when the pretended survey was made by George H. Thompson.

XVI.

This defendant says that the survey approved by J. W. Mandeville, surveyor general, was under examination by the commissioner of the general land office, with a view to the issuing of a patent thereon, when the surreptitious survey by said Thompson was made, without authority of law or instructions from the said commissioner. The plaintiff has had notice of the illegal character of Thompson's work, as appears by the letters of the commissioner of the general land office, addressed to the United States surveyor for California upon this subject, dated May 6, 1868, and May 8, 1869, of which certified copies are annexed to the previous answer of this defendant in this suit, marked Exhibit F, Nos. 1 and 2, and which are now referred to and made part of this answer. And it is shown by said letter of May 8, 1869, that a fraudulent attempt was made, in or through the surveyor general's office at San Francisco, to obtain a patent on said Thompson survey for 15,000 acres or more of lands of the United States, by annexing a false certificate to the Thompson plat, certifying that it had been advertised under the act of Congress of July 1, 1864 (11 Stat. 352), when in fact it was Hancock's plat of survey that had been advertised. The said Thompson survey was not authorized by law or instructions, and was a fraud upon the United States. It was not proper evidence of the out boundaries or the true boundaries of the San Jose

Rancho. It was not the regular or authentic work of the United States officers; and to support these allegations this defendant refers to the certified copies of the letters of the commissioners of the general land office above-mentioned, dated May 6, 1868, and May 8, 1869.

The said survey made by Hancock and approved by the surveyor general on the fourth of January, 1860, did not include any, or any part, of the lands involved in this suit. Said survey was the existing segregation of the San Jose Rancho, from the public lands, made in accordance with the statutes of the United States, and was presumptively valid at the time the grant of public land was made to this defendant, March 3, 1871, and at the time the said grant was definitely located, viz., April 3, 1871.

The lands involved in this suit in township, situated in (1) north, range eight (8) west, San Bernardino meridian, were surveyed as public lands in the year 1865, as appears by the certified copy of the plat of survey marked Exhibit G, annexed to the answer heretofore filed by this defendant, which is now herein referred to and made part of this answer.

XVII.

This defendant denies that said plat of survey by Henry Hancock, approved January 4, 1860, had not become complete and final when said Thompson survey was made. Referring to the act of Congress of twenty-third of July, 1866, "To quiet land titles in California," United States Statutes, volume 14, p. 218, and to section eight (8) of said law cited in this amended bill, this de-

cision says that said law had no application and has now no application to the San Jose Rancho, or the survey thereof. The said Thompson survey was not made under, or in conformity to, said act, but, as shown on the plat thereof was made in contravention thereof. Instead of setting off to the claimants the quantity of land confirmed (the decrees of confirmation, as shown in the bill of complaint, were by boundaries and not by quantity, according to the lines of the public surveys; as directed in said section 8, his survey extended to places and objects outside of the boundaries.

The Thompson survey was not sanctioned by the law of 1866. On the contrary, it appears from the letters of the commissioner of the general land office of May 6, 1868, and May 8, 1869, and the final decision of the secretary of the interior of September 20, 1872, that said survey was rejected as not authorized by any law, and that the final survey of the Rancho San Jose was made under the act of July 1, 1864.

This defendant denies that up to June 17, 1871, the Thompson survey was *sub judice*, and denies that the lands involved in this suit were embraced in the boundaries of the Mexican grant to Palomares, Vejar and Arenas.

This defendant admits that the final survey of the confirmations of the said San Jose Rancho did not include any of the tracts in controversy in this cause.

This defendant avers that the grant of San Jose was a grant for a tract by boundaries, and that said boundaries were finally determined and described by and in

the said separate decrees confirming the said Rancho in undivided third parts to said Dalton, Palomares and Vejar; and when said decrees became final in the years 1857 and 1858, the boundaries were settled, and that thereafter the only duty of the surveyor general was to ascertain and survey these boundaries.

The final survey was made pursuant to a decision of the secretary of the interior upon the true boundaries of the grant, dated September 20, 1872, of which a certified copy is annexed to the answer of this defendant hereinbefore filed, marked Exhibit "H," and is now referred to and made part of this answer. This final survey did not include any of the lands involved in this suit, and after the decrees of confirmation became final, which was prior to the grant of lands by the United States to this defendant, there were no lands within the San Jose Rancho, except such as have been included in the final survey thereof.

XVIII.

This defendant admits that, under date of March 29, 1876, April 4, 1879, and December 27, 1883, the patents were issued to this defendant for the lands herein above described, but denied, the said patents were issued inadvertently or without authority. On the contrary, this defendant avers that said patents were issued with due deliberation and in strict conformity with the law, and that the signatures of the President of the United States and the recorder of the general land office thereto were affixed fairly and properly and under due authority of law. This defendant here refers to the Exhib-

its 1, Nos. 1 and 2, annexed to its answer heretofore filed, and makes the same part of this answer.

When the grant of lands was made to this defendant March 3, 1871, and its grant was located April 3, 1871, all the lands involved in this case were public lands of the United States.

XIX.

This defendant admits that the value of the lands demanded in this suit exceeds the sum of five thousand dollars and denies that the secretary of the interior of the United States demanded on the sixteenth of August, 1887, a relinquishment from this defendant of its claim to all the lands involved in this suit. Said demand related to and included only about fourteen hundred and one and sixty one-hundredths (1,401.60) acres of the lands hereinbefore mentioned, which will more fully appear from the certified copy of the letter making the demand annexed to the answer of the defendant heretofore filed, marked Exhibit K. and here referred to and made part of this answer.

The defendant admits that it has refused to comply with said demand.

The respondent denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged without this, that any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of this defend-

ant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable Court shall direct; and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,

Solicitor and of counsel for the respondent, the Southern Pacific Railroad Company.

CREED HAYMOND,

Of counsel for respondent.

I hereby certify that I am solicitor and of counsel for the respondent, the Southern Pacific Railroad Company, in the foregoing cause, and that in my opinion the foregoing answer is well founded in point of law.

JOSEPH D. REDDING,

Solicitor and of counsel for respondent.

United States of America,
District of California. }

I, J. L. Willcutt, being duly sworn, depose and say:—That I am the secretary of the Southern Pacific Railroad Company, one of the respondents in the above-entitled cause; that I have read the foregoing answer and know the contants thereof, and the same is true as I verily believe.

J. L. WILLCUTT.

Subscribed and sworn to before me this twenty-third day of December, 1889.

[Seal]

E. B. RYAN,

Notary Public.

Service hereof admitted by copy, January 4, 1890. Joseph H. Call, special Assistant United States attorney.

[Endorsed]: No. 68. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, vs. Southern Pacific Railroad Company et al. Answer of Southern Pacific Railroad Company. Filed Dec. 30, 1889. Wm. M. Van Dyke, Clerk. By E. H. Owen, Deputy Clerk. Joseph D. Redding, solicitor for respondent, Southern Pacific Railroad Company. No. 8 Montgomery street, San Francisco, Cal.

In the Circuit Court, of the United States, Southern District of California.

THE UNITED STATES OF AMERICA,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, et al.

Consolidated Nos. 67, 68. 69.

REPLICATION.

This repliant saving and reserving to himself ever and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers of said defendant, Southern Pacific Railroad Company, for replication thereunto, says that he will aver, maintain and prove his bill of complaint to be true, certain and sufficient in law to be answered unto and that the said answer of said defendant, and each, are uncertain,

untrue and insufficient to be replied unto by the repliant without this; that any other matter or thing whatsoever in said answers contained material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain and prove, as this honorable Court shall direct, and humbly prays as in and by his said bill *ha* has already prayed.

JOSEPH H. CALL,

Special assistant United States attorney and of counsel for plaintiff.

[Endorsed]: Consolidated Nos. 67, 68 and 69. United States of America, vs. Southern Pacific Railroad Company et al. Replication to answer of Southern Pacific Railroad Company. Filed January 25, 1890. Wm. M. Van Dyke, Clerk. Copy served by mail on Jos. D. Redding, solicitor, for said defendant, January 24, 1890. Joseph H. Call, special assistant United States attorney. Joseph H. Call, solicitor and of counsel for plaintiff.

MANDATE OF SUPREME COURT U. S.

United States of America—ss.

The President of the United States of America,

[Seal] To the Honorable, the Judges of the Circuit Court of the United States, for the Southern District of California, Greeting:

Whereas, lately in the Circuit Court of the United States for the Southern District of California, before you, or some of you, in a cause between the United States

of America, complainant, and the Southern Pacific Railroad Company, The Southern Pacific Company of Kentucky, Lewis H. Bixby, H. J. Parks, Clara E. Cumberland, Thomas S. Oldham, O. Morgan, The Pomona Land and Water Company, L. L. Bradbury, H. M. Crampton, Carlton Seaves, Stoddard Jess, Elias Fink, Charles N. Peck, S. W. Moore, George D. Ripley, C. C. Johnson, William S. Henderson, Frank Johnson, George Rhores, Cassie L. Foss, and Joseph Hinkell, defendants, wherein the decree of the said Circuit Court, entered in said cause on the sixth day of March, A. D. 1891, is in the following words, viz:

"This cause having heretofore been brought to a hearing upon the pleadings and proofs, and having been argued by Joseph H. Call, Esq., special assistant United States attorney, for the Southern District of California, of counsel for the said complainants, and by Joseph D. Redding, Esq., J. A. Anderson, Esq., and Edwin Baxter, Esq., counsel for said defendants, and having thereupon been submitted to the court for its consideration and decision, and the court, after due deliberation thereon, having ordered that the complainants' second amended bill of complaint herein be dismissed.

"It is therefore ordered, adjudged and decreed that the said second amended bill of complaint of the said complainants, the United States of America, be, and the same is hereby, dismissed.

"Los Angeles, March 6, 1891.

"ROSS,
District Judge.

"Decree entered and recorded, March 6, 1891.

"Wm. M. Van Dyke, Clerk."

as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And, whereas, in the present term of October, in the year of our Lord, one thousand eight hundred and ninety-two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter a decree in favor of the plaintiff for the relief sought.

December 12, 1892.

You, therefore, are hereby commanded that such further proceedings be had in said cause in conformity with the opinion and decree of this Court as according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the twenty-third day of

March, in the year of our Lord, one thousand eight hundred and ninety-three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed]: No. 68. Supreme Court of the United States. No. 863, October term, 1892. The United States vs. The Southern Pacific Railroad Co. et al. Mandate. Filed April 4, 1893. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA,
Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), THE SOUTHERN PACIFIC COMPANY OF KENTUCKY (a Corporation), LEWIS H. BIXBY, H. J. PARKS, CLARA E. CUMBERLAND, THOMAS S. OLDHAM, O. MORGAN, THE POMONA LAND & WATER COMPANY (a Corporation), L. L. BRADBURY, H. M. CRAMPTON, CARLTON SEAVES, STODDARD JESS, ELIAS FINK, CHARLES N. PECK, S. W. MOORE, GEORGE D. RIPLEY, C. C. JOHNSON, WILLIAM S. HENDERSON, FRANK JOHNSON, GEORGE RHORES, CASSIE L. FOSS, and JOSEPH HINKELL,
Defendants.

No. 68. (Consolidated. Nos. 67, 68 & 69.)

DECREE.

This cause came on to be further heard at this term and was argued by counsel; and thereupon, upon consideration thereof, and pursuant to the mandate of the Supreme Court heretofore entered of record herein,

It is ordered, adjudged and decreed by the Court that the United States is the owner by absolute title in fee simply of the following described lands, towit:

The west one-half (½) of section thirty-one (31), all of section twenty-nine (29), the south half of section thirty-three (33), all of section thirty-five (35), township one (1) north, range eight (8) west, the north half (½) of the southwest one-fourth (¼) of section twenty-seven (27), township one (1) north, range nine (9) west, San Bernardino base and meridian, California.

It is further ordered, adjudged and decreed that those three certain patents from the United States to defendant Southern Pacific Railroad Company, dated March 29, 1876, April 4, 1879, and December 27, 1883, respectively, be and hereby are annulled and vacated and decreed to be void in so far as said patents, or either of them, affect or include the lands hereinbefore particularly described.

Provided, that this decree shall not affect any settlement right, or right of occupancy of defendant Joseph Hinkell to the southeast quarter (¼), section thirty-three (33), township one (1) north, range eight (8) west, San Bernardino base and meridian, under any settlement law of the United States.

And it is further ordered, adjudged and decreed that the United States have and recover their proper costs to be taxed. Costs $1,723 85-100.

ROSS,
District Judge.

Decree entered and recorded April 27, 1893.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 68. In the United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. Decree. Filed April 27, 1893. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Assistant United States Attorney.

Clerk's Certificate to Papers.

I, Wm. M. Van Dyke, Clerk of the United States Circuit Court, for the Southern District of California, do hereby certify the foregoing are full, true and correct copies of the following papers, towit: The second amended bill filed in my office November 22, 1889; the answer of the Southern Pacific Railroad Company to said second amended bill, filed in my office December 30, 1889; the replication to the answer of the Southern Pacific Railroad Company, filed in my office January 25, 1890; the mandate of the Supreme Court of the United States, filed and entered in my office April 4, 1893, and the final decree filed, entered and recorded in my office April 27, 1893; all in the cause entitled the United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, Nos. 67, 68 and 69, consolidated by order of the court, as the said papers appear of record in said cause.

Attest my hand and the seal of said Circuit Court this fourteenth day of July, A. D. 1893.

WM. M. VAN DYKE,
By E. H. Owen,
Deputy Clerk.

[Seal]

[Endorsed]: United States Circuit Court, Southern District California. United States v. Southern Pacific Rail-

road Company et al. 184. Master's and Examiner's Exhibit No. 31. E. H. Lamme, master and examiner of chancery, for plaintiff. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 32. Leo. Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 33.

Statement of Proceedings in case No. 177, entitled "The United States of America vs. The Southern Pacific Railroad Company et al." Plaintiff's Exhibit 40 before Examiner Lamme, in case No. 184.)

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Complainants, vs. THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND GARRIT L. LANSING, TRUSTEES, AND THE CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS, AND ALBERT A. HUBBARD, Defendants.	No. 177.

STATEMENT OF PROCEEDINGS.

The complainants filed their bill of complaint herein

on the twenty-seventh day of March, 1890, against The Southern Pacific Railroad Company, The Southern Pacific Company of Kentucky, The City Brick Company, Thomas Goss, Edward Simmons, and Albert A. Hubbard, which is hereto annexed.

A writ of subpoena to appear and answer the said bill of complaint was thereupon, on said twenty-seventh day of March, 1890, issued, at the request of complainants, separately for each of said defendants The Southern Pacific Railroad Company, The Southern Pacific Company of Kentucky, The City Brick Company, Thomas Goss, Edward Simmons, and Albert A. Hubbard, which said subpoenas were returnable on the fifth day of May, 1890; said subpoenas for defendants The City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, with the marshal's return of service, and the marshal's separate return as to the subpoenas directed to the defendants The Southern Pacific Railroad Company, and The Southern Pacific Company of Kentucky, are hereto annexed.

On the fifteenth day of April, 1890, the complainants filed their amended bill of complaint herein against The Southern Pacific Railroad Company, D. O. Mills, and Garrit L. Lansing, trustees, and The City Brick Company, Thomas Goss, Edward Simmons, and Albert A. Hubbard, which is hereto annexed.

A writ of subpoena to appear and answer the said amended bill of complaint was thereupon, on said fifteenth day of April, 1890, issued at the request of complainants, separately for each of said defendants D. O.

Mills and Garrit L. Lansing, trustees, returnable on the second day of June, 1890, which said subpoenas are hereto annexed.

An alias writ of subpoena, directed to the defendant The Southern Pacific Railroad Company, and requiring said defendant The Southern Pacific Railroad Company, to appear and answer the said amended bill of complaint, was thereafter, on the eighth day of May, 1890, issued, returnable on the second day of June, 1890, and is hereto annexed.

The defendant The Southern Pacific Railroad Company appeared herein on the twenty-eighth day of May, 1890, by Joseph D. Redding, Esq. its solicitor.

The defendants, The City Brick Company, Thomas Goss, A. H. Hubbard, and Ed Simons, appeared herein on the second day of June, 1890, by Messrs. Chapman and Hendrick, their solicitors.

On the sixteenth day of June, 1890, the Court made and entered an order herein, directing the defendants, D. O. Mills, trustee, and Garrit L. Lansing, trustee, to appear, plead and answer or demur in said suit by the fourth day of August, 1890, a copy of which order is hereto annexed.

The defendants, D. O. Mills and Garrit L. Lansing, trustees, and The City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, appeared herein on the 27th day of June, 1890, by Joseph D. Redding, Esq., their solicitor.

On the seventh day of July, 1890, the answer of The City Brick Company, Edward Simons, sued by the name of Edward Simmons, and Albert A. Hubbard, to the bill

of complaint of complainants, was filed herein and is hereto annexed.

On the seventh day of July, 1890, the demurrer of the defendant Thomas Goss, to the bill of complaint of the complainants, was filed herein and is hereto annexed.

On the fourth day of August, 1890, the answer of the defendants to the first amended bill of complainants was filed herein, and is hereto annexed.

On the sixth day of August, 1890, the replication of the complainants to the answer of defendants, was filed herein, and is hereto annexed.

On the nineteenth day of August, 1890, the Court made and entered an order herein that the demurrer of Thomas Goss, and the answer of defendants, The City Brick Company, Edward Simmons and Albert A. Hubbard, be withdrawn, a copy of which order is hereto annexed.

The testimony was thereafter taken by the respective parties, and filed in the clerk's office of the said Circuit Court.

On the fifth day of March, 1891, being a day in the January term, A. D. 1891, of the said Circuit Court, present, the Honorable LORENZO SAWYER, Circuit Judge, and Honorable ERSKINE M. ROSS, District Judge, the hearing of said cause before the Court was had upon the pleadings and proofs, and on said fifth day of March, 1891, said cause was argued by counsel and was submitted to the Court for its consideration and decision upon said argument, and upon briefs to be thereafter filed on behalf of the respective parties by counsel.

On the fifth day of March, 1891, the Court made and entered an order herein that the answer of the defend-

ants, The City Brick Company, Edward Simmons and Albert A. Hubbard, be restored, a copy of which order is hereto annexed.

On the eighteenth day of May, 1891, the Court made and entered an order herein that said cause be now finally submitted to this court for its consideration and decision.

On the twenty-second day of June, 1891, the Court made and entered an order herein that the complainant's amended bill of complaint be dismissed, without costs.

On the twenty-second day of June, 1891, a final decree, dismissing the said amended bill of complaint, in accordance with the terms of said order, was signed, filed, entered and recorded herein, and is hereto annexed.

In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

IN EQUITY.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY OF KENTUCKY, THE CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS AND ALBERT A. HUBBARD,
Defendants.

BILL OF COMPLAINT.

To the Judges of the Circuit Court of the United States, for the Southern District of California:

The United States of America, by the attorney-general thereof, brings this, its bill, against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California; the Southern Pacific Company of Kentucky, a corporation organized and existing under the laws of Kentucky, and owning and operating a railroad in this judicial district.

City Brick Company, a corporation organized and existing under the laws of California, Thomas Goss, Edward

Simmons and Albert A. Hubbard, each a resident and a citizen of the State of California.

And thereupon your orator complains and says that the lands hereinafter described, situate and being in Los Angeles county, California, were acquired by the United States of America from Mexico in 1846, and confirmed by treaty of Guadalupe Hidalgo in 1848; and were then, and at all times since have been, public land of the United States, not mineral, to which the United States have had full title, and have not been patented, reserved, sold, granted, appropriated, and have been free from all claims and rights and occupancy, except as affected by the acts of Congress and orders of withdrawals and routes of locations, as hereinafter fully set forth; said lands being described as follows, towit:

All of section 35, township 4 north, range 15 west and all of sections 1, 11 and 13, township 3 north, range 15 west, S. B. M.

Your orator further shows that, by act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic & Pacific Railroad Company, and granted to said company, in the State of California, every alternate section of public land, not mineral, to the amount of ten alternate sections of public land per mile on each side and along the line of route to be located by said company; and, by the same act of Congress, there was, upon the same terms, limitations and conditions, a similar grant made to the Southern Pacific

Railroad Company, to aid in the construction of a line of road to San Francisco, a copy of the material parts of said act of Congress being hereto annexed and made a part hereof, marked Exhibit "A."

Your orator further shows that said Atlantic & Pacific Railroad Company duly accepted said grant of July 27, 1866, on November 23, 1866, within the time and manner provided in said act, and did designate the line of its route by a plat thereof, which it filed in the office of the commissioner of the general land office on or about March 12, 1872, and all the odd sections of public lands on each side of said road, for thirty miles, were then withdrawn from market and reserved from sale, by executive orders.

Your orator further shows the Court that, by section 23 of an act of Congress, approved March 3, 1871, entitled "An act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," it was provided as follows:

"That, for the purpose of connecting the Texas & Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866.

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company or any other railroad company."

Said Southern Pacific Railroad Company accepted said grant, and on April 3, 1871, did designate the line of its said road by a plat thereof, which it on that day filed in the office of the commissioner of the general land office, and did construct and complete said road in the manner and within the time prescribed, except that it did not connect with the Texas & Pacific Railroad; and, on April 3, 1871, the odd sections of public land for thirty miles in width on each side of said route, to which the United States had full title, not reserved, sold, granted, appropriated, and free from all claims and rights, were, by the department of the interior, ordered withdrawn from sale and entry, and reserved.

Your orator further shows that, by the act of Congress approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic & Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic & Pacific Railroad Company were forfeited, resumed and restored to entry for non-completion of that portion of said railroad to have been constructed in California.

Your orator further shows that the tracts of lands heretofore described lie and are situate in the county of Los

Angeles and State of California, in odd numbered sections, within ten miles of the route of the road of the Southern Pacific Railroad Company, as shown by its designated route of location filed in the office of the commissioner of the general land office pursuant to said grant and act of Congress of March 3, 1871, and said lands are also within twenty miles of the line of road as designated and filed by the said Atlantic & Pacific Railroad Company in the office of the commissioner of the general land office, under and pursuant to said grant of July 27, 1866, and are located in odd numbered sections within the so-called primary limits of the latter named railroad company, as designated and withdrawn by the interior department as aforesaid.

Your orator further shows that the United States, having the power and authority in that behalf, has elected, and does now elect, to hold, select, reserve and set apart all the said tracts of lands before described herein as a part of said twenty sections per mile granted to said Atlantic & Pacific Railroad Company by said act of Congress of July 27, 1866, and which were deducted and excluded from said grant to said Southern Pacific Railroad Company on account of said grant to said Atlantic & Pacific Railroad Company.

Your orator further shows that the route of the Southern Pacific Railroad Company, as designated by the plat thereof filed in the office of the commissioner of the general land office, as aforesaid, and as located and constructed, is, and it was necessary that it should be, upon the same general line as that of the said Atlantic & Pacific Railroad Company, as designated by the plat thereof

filed by said company, as aforesaid; and all the lands in suit herein are situated opposite to that portion of said routes which are upon the same general line.

Your orator alleges, upon information and belief, that the defendants herein claim an interest in said lands in suit herein, described as aforesaid, under and through said grant of March 3, 1871, to said Southern Pacific Railroad Company, and not otherwise; but the nature and extent of such claims are unknown to your orator, and your orator asks that defendants each answer fully, disclosing the nature and extent thereof.

Your orator alleges that defendants and neither of them have any title or interest in or to said lands, legal or equitable, for that said lands to which defendants claim title, were excepted, reserved from and excluded from said grant of March 3, 1871, to said Southern Pacific Railroad Company, and are still owned by the plaintiff.

Your orator further alleges that the defendants, City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, unlawfully claiming to own said lands, and denying the plaintiff's right and title thereto, have, at many and diverse times to your orator unknown, during the past five years, unlawfully and without authority, entered upon, cut and removed from said land large quantities of wood and timber of great value, and which amount is unknown to your orator, but which it alleges, on information and belief, exceeds the value of $10,000.00.

Your orator further alleges that there are now on said land about 1,100 cords of wood which said defendants

have so unlawfully cut therefrom, and are now wantonly and unlawfully cutting and destroying the natural timber on said lands without any license or authority, and to plaintiff's great and irreparable injury; and said defendants are now removing from said lands the wood cut thereon, and are threatening to remove all said wood, and cut and destroy the remaining trees on said land, and unless enjoined will do so to the great and irreparable injury of the plaintiff.

Your orator further shows the Court that the matter in dispute in this suit exceeds the sum and value of $5,000.00, exclusive of interest and costs.

In tender consideration whereof, and for as much as the plaintiff is remediless at and by the strict rules of the common law, and can only be relieved in a court of equity, your orator prays that its title to said lands may be quieted, and that the defendants and each of them be forever enjoined from asserting or claiming any right or title thereto adverse to the plaintiff, and your orator prays that the defendants each and their agents be forever enjoined from cutting any tree or wood upon said land, and from in any way injuring the trees growing thereon, and from removing or causing to be removed from said land any wood or timber now cut thereon, or hereafter cut thereon.

Your orator further prays for an accounting from the defendants, and each of them, and for the value of all said wood and timber cut, and all the money and profit realized therefrom, and for such other and further relief as the Court may deem equitable in the premises.

May it please your honors to grant unto your orator a writ of injunction issuing out of and under the seal of this honorable court, directed to defendants, The Southern Pacific Railroad Company, The Southern Pacific Company of Kentucky, City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, enjoining them and each of them from asserting any right, claim or title to said lands, and from denying plaintiff's title thereto, and enjoining them each from cutting any tree or wood now on said land, and from removing any wood or timber now cut on said land.

May it please your honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this honorable court, to be directed to the Southern Pacific Railroad Company, The Southern Pacific Company of Kentucky, City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, commending them each, on a certain day and under a certain penalty therein to be inserted, to be and appear before your honors, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience; and your orator will ever pray.

Your orator expressly waives answer under oath by the defendants, and each of them.

W. H. H. MILLER,
Attorney-General.
JOSEPH H. CALL,
Special Assistant United States Attorney.
W. COLE,
United States Attorney, Southern
District of California.

"Exhibit A."

"An act granting lands to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast, by the southern route.

"Sec. 3. And be it further enacted, that there be, and hereby is, granted to the Atlantic & Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State; and whenever on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office, and whenever, prior to said time, any of said sections, or parts of sections, shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other land shall be selected by said company, in lieu thereof; under the directions of the secretary of the interior in alternate sections, and designated by odd numbers, not

more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers. Provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have heretofore been granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act. Provided further, that the railroad company receiving the previous grant of land may assign their interest to said Atlantic & Pacific Railroad Company, or may consolidate, confederate and associate with said company, upon the terms named in the first and seventeenth sections of this act. Provided further, that all mineral lands be, and the same are hereby excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided. And provided further, that the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal. And provided further, that no money shall be drawn from the treasury of the United States to aid in the construction of the said Atlantic & Pacific Railroad.

"Sec. 4. And be it further enacted, that whenever said Atlantic & Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a rea-

sonable compensation for their services by the company, to be determined by the secretary of the interior, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report, under oath, to the President of the United States, and patents of land, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company, conveying the additional sections of lands as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid."

"Sec. 6. And be it further enacted, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption before or after they are surveyed, except by said company, as provided in this act, but the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public do-

main,' approved May 20, 1862, shall be and the same are hereby extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company."

"Sec. 9. And be it further enacted, that the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time thereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road."

"Sec. 11. And be it further enacted, that said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval and all other government service, and also subject to such regulations as Congress may impose restricting the charges for such government transportation."

"Sec. 12. And be it further enacted, that the acceptance of the terms, conditions and impositions of this act, by the said Atlantic and Pacific Railroad Company shall be signified in writing, under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterward, and shall be deposited in the office of the secretary of the interior."

"Sec. 17. Be it further enacted, that the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid or assistance which may be granted to, or conferred on, said company by the Congress of the United States, by the legislature of any State, or by any corporation, person, or persons, or by any Indian tribe or nation, through whose reservation the road herein provided for may pass, and said corporation is authorized to hold and enjoy any such grant, donation, loan, power, franchise, aid or assistance, to its own use for the purpose aforesaid; provided, that any such grant or donation, power, aid or assistance, from any Indian tribe or nation, shall be subject to the approval of the President of the United States."

"Sec. 18. And be it further enacted, that the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point—near the boundary line of the State of California—as they shall deem most suitable for a railroad line to San Francisco; and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided; and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

"Sec. 20. And be it further enacted, that the better to accomplish the object of this act, namely to promote the

public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times, but particularly in time of war, the use and benefits of the same for postal, military and other purposes, Congress may at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend, or repeal this act."

"Approved July 27, 1866."

[Endorsed]: No. 177. The United States of America vs. The Southern Pacific Railroad Company, and others. Bill of complaint. Filed March 27, 1890. Wm. M. Van Dyke, Clerk.

(Endorsed in lead pencil "City Brick Co. et al.")

UNITED STATES OF AMERICA.—ss.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

SUBPOENA AD RESPONDENDUM TO CITY BRICK COMPANY.

The President of the United States of America Greeting:

To the City Brick Company:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles, on the fifth day of May, A. D. 1890, to answer a bill of complaint exhibited against you in said Court by the United States of America, and to do and receive what the said Court shall have considered in

that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of March in the year of our Lord one thousand eight hundred and ninety and of our independence the one hundred and fourteenth.

WM. M. VAN DYKE.
Clerk.

By ————
Deputy Clerk.

[Seal]

Memorandum Pursuant to Rule 12, Supreme Court, United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of May next, at the Clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

WM. M. VAN DYKE,
Clerk.

By ————,
Deputy Clerk.

Marshal's Return to Subpoena.

United States Marshal's Office,
Southern District of California.

I hereby certify that I received the within writ on the twenty-seventh day of March, 1890, and personally served the same on the seventeenth day of April, 1890, by delivering to and leaving with Albert A. Hubbard, who is the secretary and treasurer of the within named The City

Brick Company, said defendant named therein, personally, at the county of Los Angeles, California, in said district, a certified copy thereof.

Los Angeles, April 18, 1890.

GEO. E. GARD,
U. S. Marshal.
By J. D. Dunlap,
Deputy.

[Endorsed]: Original No. 177. United States Circuit Court, Ninth Circuit, Southern District of California. In Equity. The United States of America vs. The Southern Pacific Railroad Company et al. Subpoena. Filed April 18, 1890. Wm. M. Van Dyke, Clerk. By ————, Deputy Clerk.

UNITED STATES OF AMERICA.—ss.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

SUBPOENA AD RESPONDENDUM TO THOMAS GOSS.

The President of the United States of America, Greeting:

To Thomas Goss:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles, on the fifth day of May, A. D. 1890, to answer a bill of complaint exhibited against you in said Court by the United States of America, and to do and receive what the said Court shall have considered in

that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fourteeth.

WM. M. VAN DYKE,
Clerk.

By ————————,
Deputy Clerk.

[Seal.]

Memorandum Pursuant to Rule 12, Supreme Court, United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of May next, at the Clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

WM. M. VAN DYKE,
Clerk.

By ————————,
Deputy Clerk.

Marshal's Return to Subpoena.

United States Marshal's Office, }
Southern District of California. }

I hereby certify that I received the within writ on the twenty-seventh day of March, 1890, and personally served the same on the eighteenth day of April, 1890, by delivering to and leaving with the within named Thomas Goss,

said defendant named therein, personally, at the county of Los Angeles, California, in said district, a certified copy thereof.

Los Angeles, April 18, 1890.

GEO. E. GARD,
U. S. Marshal.
By J. D. Dunlap,
Deputy.

[Endorsed]: Original. No. 177. United States Circuit Court, Ninth Circuit, Southern District of California. In Equity. The United States of America vs. The Southern Pacific Railroad Company et al. Subpoena. Filed April 18, 1890. Wm. M. Van Dyke, Clerk. By ———, Deputy Clerk.

UNITED STATTS OF AMERICA.—ss.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

SUBPOENA AD RESPONDENDUM TO EDWARD SIMMONS.

The President of the United States of America, Greeting:

To Edward Simmons:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles on the fifth day of May, A. D. 1890, to answer a bill of complaint exhibited against you in said Court by the United States of America, and to do and receive what the said Court shall have considered in

that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fourteenth.

WM. M. VAN DYKE,
Clerk.

By ————————,
Deputy Clerk.

[Seal.]

Memorandum Pursuant to Rule 12, Supreme Court, United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of May next, at the Clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

WM. M. VAN DYKE,
Clerk.

By ————————,
Deputy Clerk.

Marshal's Return to Subpoena.

United States Marshal's Office,
Southern District of California. }

I hereby certify that I received the within writ on the twenty-seventh day of March, 1890, and personally served the same on the seventeenth day of April, 1890, by delivering to and leaving with the within named Edward Sim-

mons, said defendant named therein, personally, at the county of Los Angeles, California, in said district, a certified copy thereof.

Los Angeles, April 18, 1890.

GEO. E. GARD,
U. S. Marshal.
By J. D. Dunlap,
Deputy.

[Endorsed]: Original. No. 177. United States Circuit Court, Ninth Circuit, Southern District of California. In Equity. The United States of America vs. The Southern Pacific Railroad Company et al. Subpoena. Filed April 18, 1890. Wm. M. Van Dyke, Clerk. By ———, Deputy.

UNITED STATES OF AMERICA.—ss.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

SUBPOENA AD RESPONDENDUM TO ALBERT A. HUBBARD.

The President of the United States of America, Greeting:

To Albert A. Hubbard:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles, on the fifth day of May, A. D. 1890, to answer a bill of complaint exhibited against you in said Court by the United States of America, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fourteenth.

WM. M. VAN DYKE,
Clerk.

By ————————,
Deputy Clerk.

[Seal.]

Memorandum Pursuant to Rule 12, Supreme Court, United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of May next, at the Clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken *pro confesso.*

WM. M. VAN DYKE,
Clerk.

By ————————,
Deputy Clerk.

Marshal's Return to Subpoena.

United States Marshal's Office,
Southern District of California.

I hereby certify that I received the within writ on the twenty-seventh day of March, 1890, and personally served the same on the seventeenth day of April, 1890, by delivering to and leaving with the within named Albert A. Hubbard, said defendant named therein, personally, at

the county of Los Angeles, California, in said district, a certified copy thereof.

Los Angeles, April 18, 1890.

GEO. E. GARD,
U. S. Marshal.
By J. D. Dunlap,
Deputy.

[Endorsed]: Original. No. 177. United States Circuit Court, Ninth Circuit, Southern District of California. In Equity. The United States of America vs. The Southern Pacific Railroad Company et al. Subpoena. Filed April 18, 1890. Wm. M. Van Dyke, Clerk. By ———, Deputy Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES OF AMERICA,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.

No. 177.

Marshal's Return to Subpoena.

I hereby certify that I received, on March 27, 1890, the subpoena in equity in the above entitled cause, to be served on the Southern Pacific Railroad Company, and the Southern Pacific Company of Kentucky; and under instructions from J. H. Call, Special United States Attorney, I sent the above subpoena to Joseph D. Redding, at-

torney for said defendants, at San Francisco, to accept service on the same, and said Joseph D. Redding has not returned said subpoena in equity, and as the day for return has passed, I return said subpoena not served.

GEO. E. GARD,
Marshal.
Frank P. Flint,
Deputy.

[Endorsed]: 177. United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et al. Return of Subpoena ad res. Filed May 8, 1890. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

THE UNITED STATES OF AMERICA, Plaintiff, vs. THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GARRIT L. LANSING, Trustees, and THE CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS and ALBERT A. HUBBARD, Defendants.	No. 177.

AMENDED BILL.

To the Judges of the Circuit Court of the United States for the Southern District of California:

The United States of America, by the attorney general thereof, brings this its amended bill against the Southern Pacific Railroad Company, a corporation, organized and existing under and by virtue of the laws of the State of California, D. O. Mills and Garrit L. Lansing, trustees, and the City Brick Company, a corporation organized and existing under and by virtue of the laws of the State of California, Thomas Goss, Edward Simmons, and Albert A. Hubbard, each citizens of the State of California, and thereupon your orator shows that the following described land situate in Los Angeles county, California, towit, all of sections 1, 11 and 13, township 3 north, range 15 west, S. B. M., and section 35, township 4 north, range 15 west, S. B. M., was acquired by the United States of America from Mexico in 1846, and confirmed by treaty of Guadalupe Hidalgo in 1848, and was then public land of the United States, not mineral.

Your orator further shows that by the act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic & Pacific Railroad Company and granted to said company in aid of the construction of such railroad, a large amount of lands in the State of California and other States and Territories, and to which said act your orator refers. (See U. S. Statutes, Vol. 14, page 292.)

Section 3 of said act provides as follows:

"That there be and hereby is granted to the Atlantic & Pacific Railroad Company, its successors and assigns,

for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from preemption or other claims, or rights, at the time the line of said road is designated, by a plat thereof filed in the office of the commissioner of the general land office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the secretary of the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

And section 18 provides as follows:

"Section 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic & Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic & Pacific Railroad herein provided for."

Your orator further shows that said Atlantic & Pacific Railroad Company duly accepted said grant and proceeded to construct said road, and did locate on the ground and designate upon a plat or map the whole of said line of railroad under said act, from Springfield, Missouri, by way of the points and places named in said act, and in the time and manner provided in said act, to the Pacific ocean, and on or about ————————, 1866, did file such plat in the office of the commissioner of the general land office, and which designation and location was approved by the secretary of the interior at that time, and all the odd sections of public lands on each side of said road, for thirty miles, were thereupon withdrawn from market and reserved from sale.

Your orator further shows the Court that, by section 23 of an act of Congress approved March 3, 1871 (see U. S.

Stats. Vol. 16, p. 573), entitled "An act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas & Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July 27, 1866."

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company, or any other railroad company."

Said Southern Pacific Railroad Company which then existed, accepted this grant, and on April 3, 1871, did designate the line of its said road by a plat thereof, which it on that day filed in the office of the commissioner of the general land office.

Your orator further shows that by the act of Congress approved July 6, 1866, entitled "An act to forfeit the lands granted to the Atlantic & Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for

other purposes," all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic & Pacific Railroad Company were forfeited, resumed and restored to the public domain for noncompletion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

Your orator alleges that on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of the Southern Pacific Railroad Company, and under a general law thereof, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," with the corporate name of the Southern Pacific Railroad Company. Said act is printed in the Statutes of California, 1861, at page 607, and to which said act your orator refers.

Said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, of constructing, owning and maintaining a railroad from some point on the bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego, in said State; thence eastward, through said county of San Diego, to the eastern line of the State of California; there to connect with a contemplated railroad from the eastern line of the State of California to the Mississippi river.

Your orator further shows that on October 11, 1870, under and by virtue solely of the said general laws of the State of California, authorizing two or more railroad companies to consolidate and amalgamate their capital stock, debts, property, assets and franchises, said Southern Pacific Railroad Company, the San Francisco & San Jose Railroad Company, a railroad corporation then organized and existing under the laws of California, and the Santa Clara & Pajaro Valley Railroad Company, also a railroad corporation then organized and existing under the laws of California, did, without any authority from the United States, by a contract in writing, agree to consolidate and amalgamate their capital stock, debts, property, assets and franchises, making a different capital, issuing new stock, and creating a new and different corporation under the name and style of the Southern Pacific Railroad Company, which contract was signed, published and filed, as provided by the laws of California.

Your orator further alleges that on the twelfth day of August, 1873, under and by virtue solely of the law of the State of California of May 20, 1861, before referred to, authorizing the amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company, pretended to be organized in 1870 as aforesaid, and the Southern Pacific Branch Railroad Company, each organized and then existing railroad companies, under and by virtue of the laws of California, did, by a contract in writing, without authority from the United States, agree to amalgamate and consolidate their capital stock, debts, property, assets and franchises, creating a

new capital stock and issuing new certificates of stock and canceling the old ones, and creating a new and different corporation by the name and style of the Southern Pacific Railroad Company, a copy of which new articles of association and incorporation are hereto attached, marked "Exhibit A B," and did duly publish and file such new articles as required by the laws of California.

And your orator alleges that the Southern Pacific Railroad Company, which was organized and created on August 12, 1873, by the said pretended articles of amalgamation and consolidation of said several railroad companies as heretofore set forth, did construct and complete a railroad from the Tehachapi Pass by way of Los Angeles to the Colorado river, in the manner and within the time prescribed in said act of Congress, in which the Southern Pacific Railroad Company therein named was authorized and empowered to do, and there was not, and is not now, any railroad or part thereof constructed or completed under said act or between said points otherwise than as aforesaid.

Your orator further shows that the general routes of said Atlantic & Pacific Railroad Company, and of said Southern Pacific Railroad Company, under said act of March 3, 1871, as said routes were located as aforesaid, cross each other in the State of California.

Your orator further alleges that said lands in suit hereinbefore described, are situated on the general line of the said designated route of the Atlantic & Pacific Railroad Company, less than twenty miles therefrom, and are less than twenty miles from said designated route of said

Southern Pacific Railroad Company, and in such overlapping limits on the general route of each of said lines of road.

Your orator further shows that said lands have never been granted, sold, reserved, occupied by homestead settlers, preempted, or otherwise disposed of by the United States, or by the Mexican or Spanish Governments, or any other government or authority, in whole or in part, or any estate or interest therein, otherwise than as set forth herein, and are not mineral lands.

Your orator alleges that said Southern Pacific Railroad Company, to which corporation said grant was made by said act of Congress of March 3, 1871, did not build or construct any portion of said railroad.

Your orator alleges upon information and belief that the defendants herein have pretended conveyances executed in due form of law from said Southern Pacific Railroad Company, the corporation organized in the year 1870, as aforesaid, to which company said grant of March 3, 1871, was made, and from said Southern Pacific Railroad Company, organized on August 12, 1873, as aforesaid, purporting to sell and convey to them, the said defendants, the said land described as aforesaid.

Your orator alleges that defendants now claim to own said lands and deny the plaintiff's right and title thereto, and have been during the past five years at many and diverse times to your orator unknown, and are now, wantonly and unlawfully cutting and destroying the natural timber on said lands without any license or authority, and to the plaintiff's great and irreparable injury.

Your orator further shows that there is now on said lands a large amount of wood which the defendants have unlawfully chopped from trees on said lands, and at diverse times during the past five years the defendants have unlawfully entered upon said lands, chopped down the timber and trees thereon, then the property of your orator, carried away such timber and used and converted the same to their own use, the amount and value of which is unknown to your orator; and are now removing from said lands wood cut thereon, and are threatening to chop down other trees on said land, remove all said wood, and unless enjoined will do so, to the great and irreparable injury of the plaintiff.

Your orator further shows that the amount in controversy herein exceeds the sum or value of $5,000, exclusive of interest and costs.

Your orator alleges that by reason of the premises, the defendants herein have surrendered and released to the United States all rights and franchises and lands, if they had any such, granted by said acts of Congress aforesaid, and which the plaintiff prays may be enforced as to the land in suit herein, without prejudice to other rights of the United States.

In tender consideration whereof, and for as much as the plaintiff is *remidless* at and by strict rules of the common law, and can only be relieved in a court of equity, your orator prays that its title to said lands may be quieted, and that the defendants and each of them be forever enjoined from asserting or claiming any right or title thereto adverse to the plaintiff, and your orator prays that the defendants each and their agents be forever enjoined

from cutting any tree or wood upon said land and from in any way injuring the trees growing thereon, and from removing, or causing to be removed, from said land any wood or timber now cut thereon or hereafter cut thereon.

Your orator further prays for an accounting from the defendants for all wood sold by them and each of them, and for all the money and profit realized therefrom, and for such other and further relief as the Court may deem equitable in the premises.

May it please your Honors to grant unto your orator a writ of injunction, issuing out of and under the seal of this honorable Court, directed to defendants, the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and ————————, the City Brick Company, Thomas Goss, Edward Simmons, and Albert A. Hubbard, enjoining them, and each of them, from asserting any right, claim or title to said lands, and from denying plaintiff's title thereto, and enjoining them each from cutting any tree or wood now on said land, and from removing any wood or timber now cut on said land.

May it please your Honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this honorable court, to be directed to the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and the City Brick Company, Thomas Goss, Edward Simmons, and Albert A. Hubbard, commanding them each, on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honors, and then and there answer the premises, and further to stand to and abide such order and decree therein as

shall be agreeable to equity and good conscience, and your orator will ever pray.

Your orator waives answer under oath.

JOSEPH H. CALL,

Special assistant United States attorney and of counsel for plaintiff.

WILLOUGHBY COLE,

United States attorney, Southern District California.

"Exhibit A B."

Articles of association, amalgamation and consolidation, made and executed on this the twelfth day of August, A. D. 1873, by and between the Southern Pacific Railroad Company, of the first part, and the Southern Pacific Branch Railroad Company, of the second part:

Witnesseth: That whereas, the said party of the first part heretofore, towit: on the eleventh day of October, A. D. 1870, was duly incorporated and organized under the laws of the State of California, by the amalgamation and consolidation of the following railroad corporations theretofore existing under the laws of said State, towit: The San Francisco & San Jose Railroad Company, the Santa Clara & Pajaro Valley Railroad Company, the Southern Pacific Railroad Company, and the California Southern Railroad Company, pursuant to articles of amalgamation and consolidation of that date by them agreed upon, which articles were subsequently amended, towit: on the eleventh day of April, A. D. 1871, by virtue of the laws of said State, whereby said corporation became duly incorporated and organized under the laws of said State for the purpose of purchasing, constructing, owning,

maintaining and operating a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado river, in the southwestern part of the State of California, a distance of seven hundred and twenty miles, as near as may be, also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City, in said last named county, a distance of forty-five miles, as near as may be; and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established.

And whereas, the said party of the second part was, heretofore, towit: on the twenty-third day of December, A. D. 1872, duly incorporated and organized under the laws of the State of California, for the purpose of purchasing, constructing, owning, maintaining, and operating a railroad from a point on the Southern Pacific Railroad (the railroad of the party of the first part) at or near Salinas City, in the county of Monterey, southeasterly to a point in Kern county, south of Tulare lake, intersecting the San Joaquin Valley division of the said Southern Pa-

cific Railroad; also from a point on the above described line, at or near San Miguel, in San Luis Obispo county; thence in a southerly direction to a point of intersection in Los Angeles county, with the line of the said Southern Pacific Railroad running from Tehachapi Pass by way of Los Angeles to Fort Yuma, said road passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles, and said roads, in the aggregate, being, as near as may be, four hundred and twenty-eight miles in length.

And whereas, said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, land, and franchises will be mutually advantageous:

And whereas, more than three-fourths in value of all the stockholders in interest of each of said parties, have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth:

Now, therefore, under and by virtue of the statute of the State of California in such case made and provided, the said parties do hereby mutually covenant and agree, each with the other, to the following articles, towit:

Article First: Said parties do hereby amalgamate and consolidate themselves into a new corporation, under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles;

And they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads,

telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever, as well in possession as in expectancy, at law or in equity, and do grant, convey and vest the same in the said new corporation, as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, judgments, claims and charges thereon or in anywise affecting the same or any part thereof.

Article Second: The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate the several lines of railroad hereinbefore described, towit: a line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado river, in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, passing through the counties of Los Angeles, San Bernardino and San Diego, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in the same State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City, in said last named county, a distance of forty-five miles, as

near as may be; also a line of railroad from a point on the line thirdly above described, at or near Salinas City, county of Monterey, southeasterly through said county and into Kern county, to a point south of Tulare lake, in said last named county, intersecting at said point the line of railroad first above described, a distance of one hundred and eighty miles as near as may be; also a line of railroad from a point on the last above described line, at or near San Miguel, in the county of San Luis Obispo; thence in a southerly direction through said county, the county of Santa Barbara and into the county of Los Angeles, to a point of intersection with the line of railroad secondly above described, towit: the line from Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, a distance of two hundred and fifty miles, as near as may be; making in all fifteen hundred and nine miles, as near as may be, and such brnches to said lines as the board of directors of said new corporation may hereafter from time to time establish.

Article Third: The board of directors of said new corporation shall consist of seven persons and the following named persons shall act as such directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation, hereafter to be adopted, viz.: C. P. Huntington, D. D. Colton, Robert Robinson, Charles Mayne, S. T. Gage, E. N. Miller, Jr., and J. L. Willcutt.

Article Fourth: The capital stock of said new corporation shall be ninety million dollars, divided into nine hundred thousand shares of one hundred dollars each, that

sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, et cetera.

Article Fifth: Each stockholder of each said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him, and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

Article Sixth: And the said several parties of the first and second parts, each for itself, hereby sells, assigns, transfers, grants, bargains, releases and conveys to the said new and consolidated company and corporation, its successors and assigns forever all its property, real, personal and mixed, of every kind and description; all its capital stock, all its interest in the shares of its capital stock subscribed, but not fully paid for; all credits, effects, judgments, decrees, contracts, agreements, claims, dues and demands of every kind and description, and all rights, privileges and franchises, corporate and otherwise, held, owned or claimed by said parties of the first and second parts, or either of them, in possesison or expectancy, either at law or in equity, subject, however, to all conditions, obligations, stipulations, contracts, agreements,

liens, mortgages, incumbrances, claims and charges thereon, or in anywise affecting the same.

Article Seventh: The said new and consolidated company and corporation is to be liable for and shall fulfill, perform, do and pay all and each of the contracts and agreements, covenants, duties, obligations, liabilities, debts, dues and demands of the said several parties of the first and second parts, but this amalgamation and consolidation shall not in any way relieve the said parties of the first and second parts, or the stockholders thereof from any and all just liabilities.

In testimony whereof, the said party of the first has caused this instrument to be signed by its vice-president (the president being absent) and its secretary, and its corporate seal to be thereunto affixed, and the said party of the second part has caused this instrument to be signed by its president and secretary, and its corporate seal thereunto affixed, in pursuance of orders and resolutions of their several boards of directors, made on the twelfth day of August, 1873.

SOUTHERN PACIFIC RAILROAD COMPANY.
By DAVID D. COLTON,
Vice-President.
J. L. WILLCUTT,
[Seal.] Secretary.

SOUTHERN PACIFIC BRANCH RAILROAD COMPANY.
By B. R. CROCKER,
President.
By E. H. MILLER, JR.,
Secretary.
[Seal.]

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of said Southern Pacific Railroad Company, party of the first part, to the foregoing new articles of association, amalgamating and consolidating, the said parties of the first and second parts, hereby consents to such amalgamation and consolidation and to the said new articles of association, this twelfth day of August, A. D. 1873.

LELAND STANFORD.
CONTRACT & FINANCE CO.,
Per W. E. BROWN, Secretary.
MARK HOPKINS.
ROBERT ROBINSON.
S. T. GAGE.
CHAS. MAYNE.
DAVID D. COLTON.
J. L. WILLCUTT.
E. H. MILLER, JR.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Branch Railroad Company, party of the second part to the foregoing new articles of association, amalgamating and consolidating the said parties of the first part and second parts, hereby consents to such amalgamation and consolidation, and to the said new articles of association, this twelfth day of August, A. D. 1874.

LELAND STANFORD,
E. H. MILLER, JR.,
ALBERT GALLATIN,
MARK HOPKINS,
E. W. HOPKINS,
C. H. CUMMINGS,
B. R. CROCKER.

Department of State.
State of California, }

I, W. C. Hendricks, secretary of state of California, do herby certify that I have carefully compared the annexed copy of articles of association, amalgamation and consolidation between the Southern Pacific Railroad Company and the Southern Pacific Branch Railroad Company, with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole therof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the great seal of State, at office in Sacramento, California, the fifth day of September, A. D. 1889.

W. C. HENDRICKS,
Secretary of State.
By H. B. Davidson,
Deputy.

[Seal]

[Endorsed]: No. 177. In United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company, The City Brick Company et al. Amended bill. Filed April 15, 1890. Wm. M. Van Dyke, Clerk. J. H. Call, special assistant United States attorney.

United States of America.—ss.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

SUBPOENA AD RESPONDENDUM TO D. O. MILLS.

The President of the United States of America, Greeting:

To D. O. Mills.

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the court room in Los Angeles, on the second day of June, A. D. 1890, to answer an amended bill of complaint exhibited against you in said court by The United States of America, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this fifteenth day of April, in the year of our Lord, one thousand eight hundred and ninety, and of our independence, the one hundred and fourteenth.

WM. M. VAN DYKE,
Clerk.

By ————,
Deputy Clerk.

Memorandum Pursuant to rule twelve, Supreme Court, U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of June

next, at the clerk's office of said court, pursuant to said amended bill; otherwise the said amended bill will be taken pro confesso.

WM. M. VAN DYKE,
Clerk.

By ————,
Deputy Clerk.

Marshal's Return to Subpoena.

United States Marshal's Office,
Southern District of California.

I hereby certify that I received the within writ on the fifteenth day of April, 1890, and *and* after diligent search I am unable to find the within named D. O. Mills in my district.

Los Angeles, May 5, 1890.

GEO E. GARD,
United States Marshal.
By Frank P. Flint,
Deputy.

[Endorsed]: Original. No. 177. United States Circuit Court, Ninth Circuit, Southern District of California. In equity. United States of America vs. The Southern Pacific Railroad Company et als. Subpoena. Filed May 8, 1890. Wm. M. Van Dyke, Clerk. By ————, Deputy Clerk.

United States of America.—ss.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

SUBPOENA AD RESPONDENDUM TO GARRIT L. LANSING.

The President of the United States of America, Greeting:

To Garrit L. Lansing.

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the court room in Los Angeles, on the second day of June, A. D. 1890, to answer an amended bill of complaint exhibited against you in said court by The United States of America, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this fifteenth day of April, in the year of our Lord one thousand eight hundred and ninety, and of our independence, the one hundred and fourteenth.

WM. M. VAN DYKE,
Clerk.

By ————,
Deputy Clerk.

Memorandum pursuant to rule twelve, Supreme Court, United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of June next,

at the clerk's office of said court, pursuant to said amended bill; otherwise the said amended bill will be taken pro confeso.

WM. M. VAN DYKE,
Clerk.

By ————————,
Deputy Clerk.

Marshal's Return to Subpoena.

Southern District of California. }
United States Marshal's Office, }

I hereby certify, that I received the within writ on the fifteenth day of April, 1890, and after diligent search I am unable to find the within named Garrit L. Lansing in my district.

Los Angeles, May 5, 1890.

GEO. E. GARD,
United States Marshal.
By Frank P. Flint,
Deputy.

[Endorsed]: Original. No. 177. United States Circuit Court, Ninth Circuit, Southern District of California. In equity. United States of America vs. The Southern Pacific Railroad Company et als. Subpoena. Filed May 8, 1890. Wm. M. Van Dyke, Clerk. By ————————, Deputy Clerk.

United States of America.—ss.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

SUBPOENA AD RESPONDENDUM TO THE SOUTHERN PACIFIC RAILROAD COMPANY.

The President of the United States of America, Greeting:

To The Southern Pacific Railroad Company.

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles, on the second day of June, A. D. 1890, to answer an amended bill of complaint exhibited against you in said court by the United States of America, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this eighth day of May, in the year of our Lord one thousand eight hundred and ninety, and of our independence the one hundred and fourteenth.

WM. M. VAN DYKE,
Clerk.

By ————,
Deputy Clerk.

Memorandum pursuant to rule twelve, Supreme Court, United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of June next, at the clerk's office of said court, pursuant to said amended bill; otherwise the said amended bill will be taken pro confesso.

WM. M. VAN DYKE,
Clerk.

By ————,
Deputy Clerk.

Marshal's Return to Subpoena.

Southern District of California. }
United States Marshal's Office, }

I hereby certify that I received the within writ on the eighth day of May, 1890, and personally served same on the nineteenth day of May, 1890, by delivering to and leaving with The Southern Pacific Railroad Company, by delivering to and leaving with C. Cabot, managing agent of said company, and personally served the said writ on the nineteenth day of May, 1890, by delivering to and leaving with The Southern Pacific Railroad Company, by delivering to and leaving with Charles F. Crocker, a director and managing agent of said company, and by delivering to and leaving with C. P. Huntington, a director and managing agent of said company, said defendant named

therein, personally, at the county of Los Angeles, in said district, a certified copy thereof.

Los Angeles, June 2, 1890.

GEO. E. GARD,
United States Marshal.
By Frank P. Flint,
Deputy.
And by M. F. Tarble,
Deputy.

[Endorsed]: No. 177. United States Circuit Court, Ninth Circuit, Southern District of California. In equity. United States of America vs. The Southern Pacific Railroad Company et als. Alias Subpoena. Filed June 5, 1890. Wm. M. Van Dyke, Clerk. By ———— Deputy Clerk.

At a stated term, towit, the January term, A. D. 1890, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles, on Monday, the sixteenth day of June, in the year of our Lord one thousand eight hundred and ninety. Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA, Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GARRIT L. LANSING, Trustees, and THE CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS and ALBERT A. HUBBARD, Defendants.

No. 177.

ORDER DIRECTING ABSENT DEFENDANTS TO APPEAR.

It appearing to the satisfaction of the Court that D. O. Mills and Garrit L. Lansing, trustees, defendants in the above entitled suit, are not citizens of the State of California, and cannot be found therein, and are not inhabitants of, and cannot be found in said southern district of California, and that neither of them will voluntarily appear to the amended bill of complaint of the complainants herein.

And it further appearing that this suit is brought to quiet the title of complainants to, and to enforce a claim to and to remove a cloud upon the title to real estate within said southern district of California, consisting of the land and claims of the complainants, in the said amended bill of complaint described, being the following described lands, situated in Los Angeles county, California, towit: all of sections one (1), eleven (11), and thirteen (13), township three (3) north, range fifteen (15) west, San Bernar-

dino base and meridian, and section thirty-five (35), township four (4) north, range fifteen (15) west, San Bernardino base and meridian.

It is therefore ordered and directed that the following named defendants who are absent from are not inhabitants of and cannot be found in said southern district of California, viz: D. O. Mills, trustee, whose residence is to the complaints in the above-entitled amended bill unknown, and Garrit L. Lansing, trustee, whose residence is to the complainants in the above-entitled amended bill unknown, and each of them, do appear, plead answer or demur in said suit, by the fourth day of August, 1890, and that this order be served on each of said defendants, if practicable, wherever found, by delivering a copy thereof, certified to be a correct copy by the clerk, to each of said defendants, such service to be made by such persons as the solicitor of complainants may choose, and to be proved by the affidavit of any person serving the same; and that this order be also served upon the person or persons in possession or charge of said property, if any there be, in the same manner as upon said defendants, that is to say, by delivering a copy thereof, certified to be a correct copy by the clerk, to each of said persons, such service to be made also by such persons as the solicitor of complainants may choose, and to be proved by the affidavit of any person serving the same.

And it is further ordered that in case any of such absent defendants shall not appear, plead, answer or demur within the time limited by this order, or within such further time as this court may allow, upon proof of said service

of this order and of the performance of the directions herein contained, this court will entertain jurisdiction of said suit and will proceed to the hearing and adjudication thereof in the same manner as if each of said absent defendants had been served with process within the said southern district of California; that said adjudication will, as regards said absent defendant or defendants who may not appear in said suit, affect only the property and rights which are the subject of said suit, which are under the jurisdiction of this court.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the southern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said court June 16, 1890, in the cause entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 177, and now remaining of record therein.

Attest my hand and the seal of said Circuit Court, this twenty-second day of June, A. D. 1891.

WM. M. VAN DYKE,

[Seal] Clerk.

[Endorsed]: No. 177. United States Circuit Court, Southern District of California. The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants. Certified copy of order directing absent defendants to appear. Filed June 22, 1891. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

IN EQUITY.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and GERRITT L. LANSING, Trustees, and THE CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS, and ALBERT A. HUBBARD, Defendants.

No. 177.

ANSWER OF THE CITY BRICK COMPANY.

The answer of The City Brock Company, Edward Simons, sued by the name of Edward Simmons,, and Albert A. Hubbard to the bill of complaint of The United States of America, complainant.

These defendants now and all times hereinafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answer and say:

That they admit all of the facts set forth in the said bill of complaint except those which are herein specifically denied.

And these defendants deny that they, or either of them, have any pretended conveyances, or any conveyance, executed in due form of law, or otherwise, from the said Southern Pacific Railroad Company, or any other person or corporation, purporting to sell or convey to them, these defendants, or either or any of them, the said land described in the said bill, or any part thereof, and deny that they or either or any of them have any conveyance of any sort, from any person, purporting to sell or convey the said land, or any part thereof to the said defendants, or to grant to the said defendants, or either or any of them any right, title or interest in the said lands whatsoever.

The defendants, further answering, deny that they, or either, or any of them now claim or ever did claim to own the said lands or any portion thereof, or ever denied the plaintiff's right or title thereto, and these defendants do, and each of them does disclaim all manner of right, title or interest whatsoever in or to the said lands described in the complaint, and every part and parcel thereof; and deny that they have been, during the past five years, or for any time, or that they are now or ever were wantonly or unlawfully cutting or destroying the natural timber on said lands, or that they or either or any of them ever did cut or destroy or in any manner molest any timber on said lands, without any license or authority or otherwise or at all.

And defendants, further answering, deny that there is now or *was* ever was on the said lands or any portion

thereof a large or any amount of wood which these defendants, or either or any of them ever, unlawfully or at all, chopped from trees on the said land, or that they or either or any of them, at divers or any times during the past five years, or at any other time, unlawfully, or at all entered upon the said lands or any portion thereof, or chopped down any timber or trees growing thereon, or that they or either or any of them ever carried away any timber cut on the said land or any portion thereof, or ever used or converted any timber cut on the said land or any portion thereof to their own use, or to the use of any other person, and they deny that they or either or any of them are now removing from said lands any wood cut thereon, or that they or either or any of them ever did remove from said land any wood cut thereon, or that they or either or any of them are now threatening or ever did threaten to chop down any trees on said land, or to remove all or any wood from the said land to the great or irreparable injury of the plaintiff, or otherwise or at all.

All of which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

CHAPMAN & HENDRICK,
Solicitors for Defendants.

[Endorsed]: No. 177. In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California. In equity. The United States of America, plaintiff, vs. Southern Pacific Railroad Company et al.,

defendants. Answer of certain defendants. Received copy of the within this seventh day of July, 1890, J. H. Call, attorney for plaintiff. Filed July 7, 1890. Wm. M. Van Dyke, Clerk. By ————, Deputy Clerk. Chapman & Hendrick, attorneys for said defendants.

In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and the CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS, and ALBERT A. HUBBARD, Defendants.

No. 177. In Equity.

DEMURRER OF THOMAS GOSS.

The demurrer of Thomas Goss to the bill of complaint of the United States of America.

This defendant, by protestation, not confessing any or all of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as therein set forth and alleged, doth demur to the said bill, and for cause of demurrer sayeth:

That the said bill contains no matter of equity wherein this Court can grant any decree or give complainant any relief as against this defendant.

Wherefore, this defendant does demur thereto, and crave judgment of the Court whether he shall make answer to said bill otherwise than as aforesaid, and he prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

CHAPMAN & HENDRICK,
Solicitors for defendant.

We hereby certify as counsel for the defendant in the foregoing demurrer, that in our opinion the same is well founded in point of law and proper to be filed.

CHAPMAN & HENDRICK,
Solicitors for defendant.

Affidavit of Defendant.

Defendant Thomas Goss makes oath that the foregoing demurrer is not interposed for delay of the cause in which it is filed.

THOMAS GOSS.

Subscribed and sworn to before me this fifth day of July, 1890.

CHARLES WORTH,
Notary Public.

[Endorsed]: Original. No. 177. In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California. In equity. The United States of America, plaintiff, vs. Southern Pacific Railroad Company et al., defendants. Demurrer of Thomas Goss. Received copy of the within this seventh day of July, 1890. J. H. Call, attorney for plaintiff. Filed July 7, 1890. Wm. M. Van Dyke, clerk, by ———, deputy clerk. Chapman & Hendrick, attorneys for defendant.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and the CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS, and ALBERT A. HUBBARD,
Respondents.

No. 177.

ANSWER OF THE RESPONDENTS TO THE FIRST AMENDED BILL.

Now come the respondents above named in the above entitled cause, and for answer to the first amended bill in equity filed herein and making answer to said bill and to so much thereof as they are advised is material and now and at all times hereafter saving and reserving unto themselves all benefit and advantages of exception which may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto or to so much and such parts thereof as these respondents are advised is material or necessary for them to make answer unto, answering, say:

I.

The respondents allege that the Southern Pacific Railroad Company, one of the respondents herein, is a corpo-

ration, organized and existing under the laws of the United States and the laws of the State of California.

II.

The respondents admit that the lands mentioned in said bill were acquired by the United States from the Republic of Mexico, about the year 1846, said lands now being described according to the United States surveys, as, all of sections 1, 11 and 13, township 3 north, range 15 west, S. B. M., and section 35, township 4 north, range 15 west, S. B. M., and that said lands were in the year 1848, public lands of the United States, not mineral.

III.

The respondents admit that by the act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic & Pacific Railroad Company and granted to said Company in aid of the construction of such railroad and upon the terms and conditions in said act expressed, but not otherwise, a large amount of lands, but respondents deny that by said act any grant of lands was made to the Atlantic & Pacific Railroad Company, which attached to the surface of the earth in the State of California or took any lands in the State of California from out the public domain.

IV.

The respondents admit that said Atlantic & Pacific Railroad Company accepted said grant of July 27, 1866, within the time provided in said act, but the respondents

deny that said company did designate the line of its route or did locate on the ground and designate upon a plat or map the whole of said line of railroad under said act; the respondents deny that the said company did locate on the ground or designate upon a plat or map the whole of said line of railroad under said act, from Springfield, Missouri, by way of the points or places named in said act or in the time and manner provided in said act, to the Pacific Ocean or to any points whatever; the respondents deny that said company ever lawfully located or designated any line of railroad in the State of California which it was authorized to locate, designate or construct; the respondents deny that the Atlantic & Pacific Railroad Company did on the ——— day of ———, 1866, or upon any date or dates, file such plat in the office of the commissioner of the general land office; the respondents deny that said designation or location was approved by the secretary of the interior at that time or at all; the respondents deny that all or any of the odd sections of public lands on each side of said route for thirty miles were thereupon withdrawn from market or reserved from sale in any way whatsoever.

V.

The respondents deny that the orders issued by the commissioner of the general land office on or about March 12, 1872, or April 22, 1872, for the withdrawal of lands on the line of the Atlantic & Pacific Raliroad, or any executive orders for withdrawal from market or reservation from sale of public lands for the benefit of the Atlantic & Pacific Railroad Company or under its grant,

included the lands involved in this action. Said lands had theretofore been withdrawn for the Southern Pacific Railroad Company and neither said orders of March 12, 1872, or April 22, 1872, or any other executive orders for the benefit of the Atlantic & Pacific Railroad Company took effect upon the lands herein claimed by the complainant or any part thereof, because said lands had, by previous executive orders, been withdrawn for the benefit of the Southern Pacific Railroad Company, one of the respondents herein and were expressly excepted from withdrawal orders to be made for the benefit of the said Atlantic & Pacific Railroad Company, and the respondents pray leave to refer to any executive order mentioned or referred to in the bill and the same may be produced herein for the precise purport and contents thereof. The respondents aver that the lands involved in this suit had previously, on the third of April, 1871, by the filing of the map of definite location of the Southern Pacific Railroad Company, one of the respondents herein, been duly reserved from sale by and under the said twenty-third section of the act of Congress of March 3, 1871, and the sixth section of the act of Congress of July 27, 1866; and allege also that said lands have been duly withdrawn from market and appropriated for the use of the Southern Pacific Railroad Company, one of the respondents herein, by the order of the commissioner of the general land office to the register and receiver of the United States land office at Los Angeles, issued April 21, 1871.

VI.

The respondents admit that by section 23 of an act of Congress, approved March 3, 1871, U. S. Statutes, volume

16, page 573, entitled, "An act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas & Pacific Railroad, with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July 27, 1866."

"Provided, however, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company, or any other railroad company." The respondents admit and allege that the said Southern Pacific Railroad Company which then existed, accepted said grant on April 3, 1871, and did designate the line of its said road by a plat thereof which it, on that day, filed in the office of the commissioner of the general land office.

VII.

The respondents further admit that by the act of Congress, approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic & Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to

the Pacific Coast, and to restore the same to settlement and for other purposes" all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic & Pacific Railroad Company were forfeited, resumed and restored to the public domain for non-completion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

VIII.

The respondents admit that on December 2, 1865, a corporation was organized, under the laws of the State of California, by the name and style of the Southern Pacific Railroad Company and under a general law thereof, approved May 20, 1861, entitled, "An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto, with the corporate name of the Southern Pacific Railroad Company." Said act is printed in the statutes of California, 1861, at page 607; admit that said corporation was formed for the purpose and with the corporate power as stated in its articles of incorporation.

IX.

The respondents deny that on October 11, 1870, the Southern Pacific Railroad Company, the San Francisco & San Jose Railroad Company, a railroad corporation then organized and existing under the laws of California, and the Santa Clara & Pajaro Valley Railroad Company, by virtue solely of the said general laws of the State of California, authorizing two or more railroad companies to consolidate and amalgamate in their capital stock, debts,

property, assets and franchises, did without any authority from the United States, agree, by contract, in writing, to consolidate and amalgamate, their capital stock, debts, property, assets and franchises; deny that by so doing they made a different capital or issued new stock and created a new and different corporation under the name and style of the Southern Pacific Railroad Company. The respondents allege that said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company and the Santa Clara and Pajaro Valley Railroad Company, did, on the eleventh of October, 1870, enter into articles of amalgamation and consolidation, a copy of which articles is hereto attached and made a part of this answer and marked "Respondent's Exhibit A"; the respondents allege that said amalgamation was made with ample authority, bath under the general and special laws of the State of California and under the sanction and authority and consent and ratification of the United States of America.

X.

Respondents deny that on the twelfth of August, 1873, or upon any other date, under or by virtue solely of the law of the State of California, of May 20, 1861, before referred to, authorizing amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company pretended to be organized in 1870, as aforesaid, or the Southern Pacific Branch Railroad Company or either of them organized or then existing railroad companies under or by virtue of the laws of California, did, by a contract in writing, without author-

ity from the United States agree to amalgamate or consolidate their capital stock or debts or property or assets or franchises, creating a new capital stock or issuing new certificates of stock or cancelling the old ones or creating a new or different corporation by the name and style of the Southern Pacific Railroad Company; on the contrary, the respondents allege that on the twelfth day of August, 1873, the Southern Pacific Railroad Company, one of the respondents and the Southern Pacific Branch Railroad Company did enter into articles of incorporation and consolidation, a copy of which is attached to the bill, and the respondents refer to said articles of consolidation and the contents thereof for a proof as to what was done on said day. The respondents allege that said contract and agreement and consolidation were with the authority, consent, ratification and approval of the United States of America and were within authority of law and were entered into by virtue of the general and special laws of the State of California in that behalf provided. The respondents admit that all of the articles of amalgamation and consolidation referred to in said bill of complaint were duly published and filed as required by the laws of the State of California.

XI.

The respondents allege that the Southern Pacific Railroad Company, organized under the laws of the State of California, in 1865, is one of the respondents herein and is the same Southern Pacific Railroad Company as was mentioned in the act of Congress of July 27, 1866, above referred to, and is the same Southern Pacific Railroad

Company as is mentioned in the articles of consolidation and amalgamation above referred to, dated, respectively, October 11, 1870, and August 12, 1873, and is the same Southern Pacific Railroad Company that is mentioned in the act of Congress of March 3, 1871, above referred to. The respondents allege that the United States of America by said acts of Congress, duly recognized the said Southern Pacific Railroad Company and the contracts of amalgamation and consolidation entered into as above recited and duly ratified the same; the respondents allege that the said Southern Pacific Railroad Company is the same Southern Pacific Railroad Company to-day now sued upon as one of the respondents in this action and is mentioned in all of the foregoing statutes and articles.

XII.

The respondents deny that the Southern Pacific Railroad Company "which was organized or created on August 12, 1873, by the said pretended articles of amalgamation and consolidation of said several railroad companies as heretofore set forth" did construct and complete a railroad from Tehachapa Pass by way of Los Angeles to the Colorado river in the manner and within the time prescribed in said act of Congress in which the Southern Pacific Railroad Company therein named was organized or empowered to do, and deny that there was not or is not now any railroad or part thereof, constructed or completed under said act or between said points otherwise than as aforesaid; the respondents allege that the Southern Pacific Railroad Company, one of the respondents herein, which

is the same Southern Pacific Railroad Company that is mentioned in the act of Congress of July 27, 1866, and the act of Congress of March 3, 1871, and the articles of association and consolidation herein set forth, did construct and complete a railroad from Tehachapa Pass by way of Los Angeles to the Colorado river in the manner and within the time prescribed in the said acts of Congress, and that the said railroad company has ever since been in running order and operating for the benefit of the United States and in accordance with all of the terms and conditions mentioned in said acts of Congress.

XIII.

The respondents deny that the general routes of the said Atlantic & Pacific Railroad Company and of the said Southern Pacific Company, under said act of March 31, 1871, as said routes were located as aforesaid, cross each other in the State of California in any way whatsoever or at all; the respondents deny that said lands in suit hereinbefore described are situated on the general line of the said designated route of the Atlantic & Pacific Railroad Company within any distance of said designated route or less than twenty miles therefrom; the respondents allege that the Atlantic & Pacific Railroad Company never did designate its route in the State of California and never located its line in the State of California, in any manner whatsoever, but, on the contrary, wholly failed to do so; the respondents allege that the Atlantic & Pacific Railroad Company filed certain fragmentary maps of proposed route within the State of California which are attached to this answer and made a part hereof

and marked "Respondents' Exhibit C"; that said maps were filed on different dates and do not connect with each other and show an attempted location from the bay of San Francisco down the coast of California and thence through the State of California, as appears upon said maps to which reference is hereby made; that said maps were filed upon different dates in the interior department, towit, on March 12, 1872, and April 16, 1874, and do not constitute a map or plat of definite location in accordance with the terms of the act of Congress of July 27, 1866. Your respondents show that said Atlantic and Pacific Railroad Company was authorized to construct a road and to receive a grant in the State of California, from the Colorado river at or near the thirty-fifth parallel of latitude and thence by the most direct and eligible route to the Pacific Ocean; that said company never did locate its road in accordance with the terms of said act of Congress; that said maps heretofore mentioned, which were filed or attempted to be filed by said Atlantic & Pacific Railroad Company in the office of the commissioner of the general land office were in direct violation of the terms of the act of Congress and in a direction opposite to said terms and upon the surface of the earth of a portion of California never intended by said act of Congress to be built upon or constructed for railroad purposes by said Atlantic & Pacific Railroad Company.

XIV.

The respondents admit that said lands are less than twenty miles from the designated route of said Southern Pacific Railroad Company, but deny that said lands are

in any overlapping limits on the general route of the line of any other railroad company or of the Atlantic & Pacific Railroad Company and the Southern Pacific Railroad Company. The respondents deny that there are any overlapping limits of any railroad company which affect said lands. The respondents allege that the said Atlantic & Pacific Railroad Company never did locate or designate its line in the State of California or create, in any way, or have any limits for the line of its road in the State of California; the respondents admit that said lands have never been preempted or disposed of by the Mexican or Spanish governments or any other government or authority, but deny, that said lands have never been granted, sold, reserved or otherwise disposed of by the United States or any other government or authority, in whole or in part, or any estate or interest therein, otherwise than as set forth in the bill of complaint, but, on the contrary, allege that said lands were granted to the Southern Pacific Railroad Company, one of the respondents herein, by the act of Congress of March 3, 1871, and allege that upon the filing of the map of definite location on April 3, 1871, which was done on that day, said lands were shown to be within the granted or twenty-mile limits of said grant to said Southern Pacific Railroad Company and did become, on said day a part of the defined granted limits of said grant to said company, and the respondents further allege that the railroad opposite to said lands was duly constructed and in operation in the time required by law.

XV.

The respondents admit that said lands are not mineral lands but that the same are agricultural lands.

XVI.

The respondents deny that said Southern Pacific Railroad Company, to which corporation said grant was made by said act of Congress of March 3, 1871, did not build or construct any portion of said railroad, but, on the contrary, allege, that it did construct the same and the whole thereof and is the same corporation mentioned in said act of Congress.

XVII.

The respondents allege that the Southern Pacific Railroad Company fully constructed and completed its road, according to said acts of Congress and the construction thereof has been accepted and approved by the President of the United States; that the construction of the last mile of said road was accepted by President Hayes on the twenty-third of January, 1878; that commissioners duly appointed by the President made and filed their reports and the same were accepted by the secretary of the interior and the President of the United States, and this action of the secretary and President is binding upon the United States and its validity cannot be called in question in this cause.

XVIII.

The respondents allege that said Atlantic & Pacific Railroad Company's pretended line was not located or attempted to be located until long subsequent to April 3, 1871; that when sought or pretended to be located it was found to be on a wholly unauthorized route, not prescribed or permitted under any act of Congress in relation to or concerning said Atlantic & Pacific Railroad Company.

XIX.

The respondents the City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard allege that they purchased the land and premises involved in this cause from the Southern Pacific Railroad Company, paying a large sum of money therefor to the Southern Pacific Railroad Company; that said purchase was made in due form by a contract and deed in writing; that the said respondents purchased said land after the said Southern Pacific Railroad Company had constructed its road opposite to said land and after said road had been accepted by the President of the United States as duly and properly completed; that said purchase was made in good faith and said respondents have and are relying upon the representations made by the United States and upon the conduct of the United States towards the respondent the Southern Pacific Railroad Company under said acts of Congress, and said respondents declare themselves to be innocent and bonafide purchasers of said land and premises.

XX.

The respondents deny that they at any time have or are now wantonly or unlawfully cutting or destroying the natural timber on said lands without any license or authority or to the plaintiff's great or irreparable injury or at all; the respondents deny that there is now on said lands a large amount of wood or any amount which the respondents have unlawfully chopped from off the trees on said lands; deny that at divers times or at all during the past five years or during any period of time that the

respondents have unlawfully entered upon said lands or chopped down the timber or trees thereon which was the property of the complainant; deny that they have carried away such timber or used or converted the same to their own use; deny that they are now removing from said lands wood cut thereon or are threatening to chop down other trees on said land or to remove all of said wood; deny that unless enjoined they will do so to the great and irreparable injury of the complainant; on the contrary, the respondents allege that whatever they have done upon said lands and premises has been done by virtue of their ownership therein and with full power and right in the premises and lawful; the respondents admit that the subject matter in controversy in this action exceeds the amount of five thousand dollars ($5,000), exclusive of interest and costs of suit.

XXI.

The respondents deny that by reason of the premises or at all they have surrendered or released to the United States any or all rights or franchises or lands granted to them by said acts of Congress aforesaid, and deny that the complainant has any right, of any nature, to the lands in suit herein that should be enforced.

XXII.

These respondents deny that the United States had or has power or authority to elect, has elected or does elect to hold, select, reserve or set apart the tracts of land in the bill described as part of any lands granted to the Atlantic & Pacific Railroad Company by said act of Con-

of July 27, 1866, and deny that said lands in the bill mentioned ever were or have been or can be, excluded or deducted from the lands granted to these respondents either on account of the grant of the said Atlantic and Pacific Railroad Company or for any other cause. The respondents deny that the attorney-general of the United States or any other officer thereof has any right, power or authority for the United States or on its behalf to designate, select or claim said lands as lands granted to the Atlantic & Pacific Railroad.

XXIII.

The respondents deny that the route of the Southern Pacific Railroad Company, as designated by the plat thereof, filed in the office of the commissioner of the general land office, as aforesaid, and as located and constructed, is, and deny that it was necessary that it should be upon the same general line as that of the said Atlantic and Pacific Railroad Company, as designated by the plat thereof filed or alleged or pretended to have been filed by said company, as aforesaid; and deny that all or any of the lands in suit herein are situated opposite to any portion of said routes which are upon the same general line. The respondent, the Southern Pacific Railroad Company, shows that the law of its grant required that its road should commence at Tehachapa Pass and extend to the Texas Pacific Railroad near the Colorado river, and should go by way of Los Angeles; Tehachapa Pass is in township 11 north of range 12 west, San Bernardino meridian, and Los Angeles is in township 1 south, range 13 west, and the general course of the railroad from Te-

hachapa Pass to Los Angeles is nearly in a direct line from north to south. The Atlantic & Pacific Railroad, if it had been built, was to have extended from a crossing of the Colorado river near the thirty-fifth parallel of latitude to the Pacific Ocean. The point chosen for crossing the Colorado river by the Atlantic & Pacific Company is in latitude about 34 degrees 40 minutes north.

The proposed or suggested location of the Atlantic & Pacific Railroad opposite the land in controversy extended from a point on the west boundary of Los Angeles county in township 4 north, range 17 west, San Bernardino meridian, to a point in township 7 north, range 7 east, San Bernardino meridian, which is a line nearly east and west. The location of the Southern Pacific Railroad is made as the law requires from Tahachapa Pass to Los Angeles on a line directly north and south, and the two lines cross at right angles and are not on the same general route, and the land in controversy is not opposite a portion of the Southern Pacific Railroad, which is located upon the same general line as was proposed by the Atlantic & Pacific Railroad.

XXIV.

The respondent, the Southern Pacific Railroad Company, alleges that the land involved in this cause, viz: Sections 11 and 13, township 3 north, range 15 west, San Bernardino meridian, and section 35, township 4 north, range 15 west, San Bernardino meridian, lies within twenty miles of a part of the Southern Pacific Railroad, located under the grant to said company by act of March 3, 1871, that was completed and accepted by the Presi-

dent of the United States under said law on the second day of March, 1877, and that section 35, township 4 north, range 15 west, San Bernardino meridian, were located by this respondent, the Southern Pacific Railroad Company, per List No. 31, of the Los Angeles Land Office, as part of its grant under said Acts of Congress of March 3, 1871, and July 27, 1866, long before the institution of this suit; viz: on the twenty-eighth day of April, 1885, at the United States Land Office at Los Angeles; and that on the seventeenth day of April, 1885, the cost of surveying the plats on said list was paid into the treasury of the United States according to the provision of the Act of Congress of July 31, 1876, 19 Statutes, page 121, and on the twenty-eighth day of April, 1885, the location fees of the register and receiver were paid according to section 2238, Revised Statutes, and the said list No. 31, was transmitted by said officers to the commissioner of the General Land Office at Washington city, for a patent thereon to be issued to this respondent. On the nineteenth day of January, 1889, and prior to the institution of this suit the estimated cost of writing and recording the patent on said list was paid into the treasury of the United States, and that by reason of the grant of lands made by Congress to the respondent and the location of the route of its road, and the full completion of the said road as provided by law, and by reason of the location of the lands in contest at the local land office, and of the payments of fees and costs as above stated, the respondent, the Southern Pacific Railroad Company, had become, and was the owner of the tracts located as aforesaid, and was and is entitled to a

patent therefor from the United States, and that the United States had not any title or interest in said tracts at the time of the institution of this suit. The respondent has fulfilled all the conditions of its grant and all the laws and the regulations of the Department of the Interior prescribed as requirements antecedent to obtaining a patent. The register and receiver at Los Angeles were authorized by law to issue, and did, on the twenty-eighth day of April, 1885, issue, to the respondent, a patent certificate entitling the respondent to a patent of the United States for the lands described therein, and said certificate is now in full force and virtue. The respondent now produces and shows to the Court a copy of the same, certified by the commissioner of the General Land Office, and makes the same a part of this answer.

XXV.

The respondents deny that the lands described in the patent certificate issued April 28, 1885, by the register and receiver at Los Angeles, were accepted, reserved or excluded from the grant by Congress of lands to this respondent by the act above mentioned, approved March 3, 1871, and denies that they are still owned by the complainant in this suit, or that the respondents have not title or interest in or to said lands.

Respondents deny that they or either of them have unlawfully cut or destroyed or removed, or are unlawfully cutting down, destroying or removing or threatening so to do, any trees, wood or lumber, and deny having unlawfully committed or intended unlawfully to commit any injury whatsoever to said tracts.

XXVI.

The respondents deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that any other matter, cause or thing in the complainants' said bill of complaint contained, material or necessary for these respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied is true to the knowledge or belief of these respondents; all of which matters and things these respondents are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDLING,
Solicitor and of Counsel for Respondents.

CREED HAYMUND, R.
Of Counsel for Respondents.

Exhibit "A."

Articles of Association, Amalgamation, etc.

Made and executed on this the eleventh day of October, A. D. 1870, by and between the San Francisco & San Jose Railroad Company, of the first part, the Santa Clara & Pajaro Valley Railroad Company, of the second part, the Southern Pacific Railroad Company, of the third part, and the California Southern Railroad Company, of the fourth part, witnesseth:

That whereas, the said party of the first part was heretofore, towit, on the eighteenth day of August, 1860, duly

incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, maintaining and operating a railroad from the city of San Francisco, in the county of San Francisco, in said State, through said county and the counties of San Mateo and Santa Clara, to the city of San Jose, in said last named county, a distance of forty-eight miles.

And whereas, the said party of the second part, was heretofore, towit, on the second day of January, 1868, duly incorporated and organized under the laws of said State for the purpose of constructing, owning, maintaining and operating a railroad from a point at or near the city of San Jose, in the county of Santa Clara and State aforesaid, connecting at said point with the railroad of the said party of the first part, and to pass thence to a point at or near the town of New Gilroy, in the same county, a distance of thirty miles.

And whereas, the said party of the third part was heretofore, towit, on the second day of December, 1865, duly incorporated and organized under the laws of said State, for the purpose of constructing, owning, maintaining and operating a railroad from some point on the bay of San Francisco, in said State, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Kern, Los Angeles and San Diego, to the town of San Diego, in said State; thence eastward through the county of San Diego to the eastern boundary line of said State, a distance of seven hundred and twenty miles, as near as may be, there to connect with a contemplated railroad from said eastern boundary line of said State to the Mis-

sissippi river, and has received large grants of land from the government of the United States to aid it in the construction and equipment of said road. And whereas, the said party of the fourth part was heretofore, towit, on the twenty-second day of January, 1870, duly incorporated and organized under the laws of said State, for the purpose of constructing, owning and maintaining a railroad from a point at or near the town of Gilroy, in the county of Santa Clara in said State, and to pass through the counties of Santa Clara, Santa Cruz and Monterey to a point at or near the town of Salinas City, in said last named county, a distance of forty-five miles, as near as may be.

And whereas, said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, lands and franchises will be mutually advantageous.

And whereas, more than three-fourths in value of all the stockholders in the interest of each of said parties have consented, in writing, to such amalgamation and consolidation upon the terms and conditions hereinafter set forth.

Now, therefore, under and by virtue of the statute of the State of California, in such cases made and provided, the said parties do hereby mutually covenant and agree, each with each, and all the others, to the following articles, towit:

Article 1. Said parties do hereby amalgamate and consolidate themselves into a new corporation under the name and style of the Southern Pacific Railroad Com-

pany, which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever as well in possession as in expectancy, at law or in equity, and do grant, convey and vest the same in said new corporation, as fully as the same are now severally held and enjoyed by them, or either of them, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, claims and charges thereon, or in any wise affecting the same.

Article 2. The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado river in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Tehachapah Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy in the county of Santa Clara, in said State, passing through said county, and the counties of Santa Cruz and Monterey to a point at or near Salinas City, in said last

named county, a distance of forty-five miles, as near as may be; also such branches to said lines as the board of directors of said new corporation may hereafter consider advantageous to said corporation and direct to be established.

Article 3. The board of directors of said new corporation shall consist of seven persons; and the following named persons shall act as such directors until their successors shall have been duly elected, pursuant to the by-laws of said new corporation, hereafter to be adopted, viz: Lloyd Tevis, Leland Stanford, Charles Crocker, C. P. Huntington, Mark Hopkins, Charles Mayne, and Peter Donahue.

Article 4. The capital stock of said new corporation shall be seventy million dollars, consisting of seven hundred thousand shares, of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

Article 5. Each stockholder of each of said party shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation, certificates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him; and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct, upon the surrender of such evidence

of his ownership of such unpaid stock of his respective company as he may now hold.

Article 6. Said new corporation shall assume and perform all the contracts, agreements, covenants, duties and obligations of what kind soever, of each of said parties, and shall pay and discharge all debts, claims and demands existing against either and all of said parties; but nothing herein contained shall release the said parties or either of them, or their stockholders, or any of them, from any of their just liabilities.

In testimony whereof, the said Southern Pacific Railroad Company by its board of directors, has caused these articles to be signed and countersigned by its president and secretary, and its corporate seal to be hereunto affixed on this the eleventh (11th) day of April, 1871.

SOUTHERN PACIFIC RAILROAD COMPANY,
By CHARLES CROCKER,
President.
J. L. WILLCUTT,
Secretary.

[Seal]

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

[Endorsed]: No. 177. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Railroad Company et al. Answer. Service accepted August 4, 1890. J. H. Call, special assistant United States attorney. Filed August 4, 1890. Wm. M. Van Dyke, Clerk. By —— ———, Deputy. Joseph D. Redding, solicitor for respondents, No. 37 Chronicle Building, San Francisco.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, and D. O. MILLS and GERRIT L. LANSING, Trustees, and THE CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS and ALBERT A. HUBBARD, Respondents. } No. 177.

REPLICATION.

The replication of the United States of America, complainant, to the answer of the Southern Pacific Railroad Company, and D. O. Mills and Gerrit L. Lansing, trustees, and the City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, respondents.

This repliant, saving and reserving to itself all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this honorable Court shall direct; and humbly prays, as in and by its said bill it hath already prayed.

JOSEPH H. CALL,

Special Assistant United States Attorney, Southern District of California.

[Endorsed]: No. 177. Circuit Court of the United States, Ninth Circuit, Southern District of California. The United States of America, complainant, vs. The Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, and the City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, respondents. Replication. Served on J. D. Redding, solicitor for defendants August 6, 1890, by mail. J. H. Call, solicitor for plaintiff. Filed August 6, 1890. Wm. M. Van Dyke, Clerk. Joseph H. Call, solicitor for plaintiff.

At a stated term, towit, the August term, A. D. 1890, of the Circuit Court of the United States of America, of

the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles, on Tuesday, the nineteenth day of August, in the year of our Lord one thousand eight hundred and ninety. Present: The Honorable ERSKINE M. ROSS, District Judge.

UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 177.

ORDER WITHDRAWING DEMURRER AND ANSWER OF CERTAIN DEFENDANTS.

This cause coming on regularly on this day to be argued upon the demurrer of the defendant, T. Goss, to the amended bill of complaint of the complainants herein, now on motion of Joseph H. Call, Esq., special assistant United States attorney, and of counsel for the complainants, and good cause appearing therefor and there being no opposition thereto, it is ordered that the said demurrer of the defendant, T. Goss, to the amended bill of complaint of the said complainants and the answer of the defendants, The City Brick Company, Edward Simmons, and Albert A. Hubbard, be and the same hereby are withdrawn subject to the right of the said defendants, through their counsel, Messrs. Chapman and Hendrick, to reinstate the said demurrer, and the said answer or

either of them, before the time for taking evidence in this cause shall have expired.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said Court August 19, 1890, in the cause entitled "United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 177," and now remaining of record therein.

Attest my hand and the seal of said Circuit Court this twenty-second day of June, A. D. 1891.

WM. M. VAN DYKE,

[Seal] Clerk.

[Endorsed]: No. 177. United States Circuit Court, Southern District of California. The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants. Certified copy of order allowing withdrawal of answer of certain defendants. Filed June 22, 1891. Wm. M. Van Dyke, Clerk.

At a stated term, towit, the January term, A. D. 1891, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles, on Thursday, the fifth day of March, in the year of our Lord one thousand eight hundred and ninety-one. Present: The Honorable LORENZO SAWYER, Circuit Judge. The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 177.

ORDER RESTORING ANSWER AND SUBMITTING CAUSE.

This cause coming on regularly on this fifth day of March, 1891, being a day in the January term, A. D. 1891, of the said Circuit Court of the United States for the Southern District of California, to be heard, Joseph H. Call, Esq., special assistant United States attorney, and Willoughby Cole, Esq., United States attorney, appearing as counsel for complainants, and Joseph D. Redding, Esq., and J. S. Chapman, Esq., appearing as counsel for the defendants, it is now, by consent of counsel for the respective parties ordered that said cause be submitted to the Court for its consideration and decision upon briefs to be filed by counsel for the respective parties, as follows, towit: by counsel for complainants within ten (10) days, by counsel for defendants within twenty (20) days after the filing of the brief on behalf of complainants, by counsel for complainants in reply within five (5) days thereafter; on motion of J. S. Chapman, Esq., counsel as aforesaid for defendants, and with the consent of counsel for complainants, and good cause appearing therefor, it is ordered that the answer of the defendants, The City Brick

Company, Edward Simmons, and Albert A. Hubbard, which said answer was heretofore withdrawn, be and the same hereby is considered restored.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said Court March 5, 1891, in the cause entitled, "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 177," and now remaining of record therein.

Attest my hand and the seal of said Circuit Court, this twenty-second day of June, A. D. 1891.

WM. M. VAN DYKE,

[Seal] Clerk.

[Endorsed]: No. 177. U. S. Circuit Court, Southern District of California. The United States of America, Complainant, vs. The Southern Pacific Railroad Company et al., defendants. Certified copy of order restoring answer of certain defendants. Filed June 22, 1891. Wm. M. Van Dyke, clerk.

United States of America—ss.

Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California.

IN EQUITY.

THE UNITED STATES OF AMERICA, Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GARRIT L. LANSING, Trustees, and THE CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS and ALBERT A. HUBBARD, Defendants.

DECREE.

This cause having heretofore been brought to a hearing upon the pleadings and proofs, and having been argued by Joseph H. Call, Esq., special assistant United States attorney for the Southern District of California, of counsel for the said complainants, and by Joseph D. Redding, Esq., counsel for said defendants, and having thereupon been submitted to the Court for its consideration and decision, and the Court, after due deliberation thereon, having ordered that the complainant's amended bill of complaint herein be dismissed without costs,

It is therefore ordered, adjudged and decreed that the said amended bill of complaint of the said complainants,

The United States of America, be and the same is hereby dismissed without costs.

Los Angeles, June 22, 1891.

ROSS,
District Judge.

Decree entered and recorded June 22, 1891.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 177. United States Circuit Court, Southern District of California. The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants. Final decree. Filed June 22, 1891. Wm. M. Van Dyke, Clerk.

Whereupon, said bill of complaint, subpoena for defendant The City Brick Company, subpoena for defendant Thomas Goss, subpoena for defendant Edward Simmons, subpoena for defendant Albert A. Hubbard, marshal's return as to the subpoenas for defendants The Southern Pacific Railroad Company and The Southern Pacific Company of Kentucky, amended bill of complaint, subpoena for defendant D. O. Mills, trustee, subpoena for defendant Garrit L. Lansing, trustee, alias writ of subpoena, copy of order directing absent defendants to appear, answer of The City Brick Company et al., demurrer of defendant Thomas Goss, answer of defendants to amended bill, replication of complainants, copy of order withdrawing demurrer of Thomas Goss and answer of The City Brick Company et al., copy of order restoring answer of defendants The City Brick Company et al., and final decree, are hereto annexed; said final decree being

duly signed, filed and enrolled, pursuant to the practice of said Circuit Court.

Attest, etc.,

WM. M. VAN DYKE,

[Seal] Clerk.

[Endorsed]: No. 177. In the Circuit Court of the United States, Ninth Judicial Circuit, for the Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Enrolled papers filed June 22, 1891. Wm. M. Van Dyke, Clerk. By ——— ———, Deputy Clerk. Recorded decree Register Book No. 1, page 64.

MANDATE OF SUPREME COURT, U. S.

United States of America—ss.

[Seal U. S. Supreme Court.]

The President of the United States of America, to the Honorable, the Judges of the Circuit Court of the United States for the Southern District of California. Greeting:

Whereas, lately in the Circuit Court of the United States for the Southern District of California, before you, or some of you, in a cause between the United States of America, complainant, and The Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and The City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, defendants, wherein the decree of the said Circuit Court entered in said cause on the twenty-second day of June, A. D. 1891, is in the following words, viz:

"This cause having heretofore been brought to a hearing upon the pleadings and proofs, and having been argued by Joseph H. Call, Esq., special assistant United States attorney for the Southern District of California, of counsel for the said complainants, and by Joseph D. Redding, Esq., counsel for said defendants, and having thereupon been submitted to the court for its consideration and decision, and the court after due deliberation thereon having ordered that the complainants' amended bill of complaint herein be dismissed without costs.

It is therefore ordered, adjudged, and decreed that the said amended bill of complaint of the said complainants, The United States of America, be, and the same is hereby, dismissed without costs.

Los Angeles, June 22, 1891.

ROSS,
District Judge.

Decree entered and recorded June 22, 1891.

WM. M. VAN DYKE,
Clerk."

as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and ninety-two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter a decree in favor of the plaintiff for the relief sought.

December 12, 1892.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the twenty-third day of March, in the year of our Lord one thousand eight hundred and ninety-three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed]: No. 177. Supreme Court of the United States. No. 922. October term, 1892. The United States vs. The Southern Pacific Railroad Company et al. Mandate. Filed April 4, 1893. Wm. M. Van Dyke, Clerk. ——— ———, Deputy.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA,
Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), D. O. MILLS and GARRIT L. LANSING, Trustees, and THE CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS and ALBERT A. HUBBARD
Defendants.

No. 177.

DECREE.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, and pursuant to the mandate of the Supreme Court heretofore entered of record herein,

It is ordered, adjudged and decreed that the United States is the owner by absolute title in fee simple of the following described lands, towit: all of sections one (1), eleven (11) and thirteen (13), township three (3) north, range fifteen (15) west, and all of section thirty-five (35), township four (4) north, range fifteen (15) west, San Bernardino base and meridian, California; and that the defendants herein, and each of them, be and hereby are forever enjoined from asserting or claiming any right or title to said lands adverse to the plaintiff herein; and said

defendants, and each of them and their agents, be and hereby are forever enjoined from cutting any trees or wood upon said lands, and from in any way injuring the trees growing thereon, and from removing or causing to be removed from said land any wood now cut thereon, or hereafter cut thereon.

And it is further ordered, adjudged and decreed that the United States have and recover their proper costs to be taxed. Costs, $1,244.05-100.

ROSS,
District Judge.

Decree entered and recorded April 27, 1893.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 177. In the United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et al. Decree. Filed April 27, 1893. Wm. M. Van Dyke, Clerk. Joseph H. Call, special assistant United States attorney.

No. 177. In the Circuit Court of the United States, Ninth Judicial Circuit for the Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Enrolled papers. Filed April 27, 1893. Wm. M. Van Dyke, Clerk. Recorded decree Register Book No. 1, page 319.

United States Circuit Court, Southern District, California. United States vs. Southern Pacific Railroad Company. No. 184. Master's and examiner's Exhibit No. 40. E. H. Lamme, master and examiner in chancery. United States Circuit Court, Ninth Circuit, Southern District of

California. United States vs. Southern Pacific Railroad Company et al. No. 184. Plaintiff's Exhibit No. 33. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 34.

Opinion of the United States Supreme Court in cases of The United States vs. Colton Marble & Lime Company, and The United States vs. The Southern Pacific Railroad Company, Nos. 862 and 863 on the docket of the United States Supreme Court. (Plaintiff's Exhibit 43 before Examiner Lamme in case No. 184.)

Supreme Court of the United States.

Nos. 862 and 863.—October Term, 1892.

Appeals from the Circuit Court of the United States for the Southern District of California. (December 12, 1892.)

862.

THE UNITED STATES,

Appellant,

vs.

THE COLTON MARBLE & LIME COMPANY, O. T. DYER, —— ARCHIBALD, and W. S. WILSON.

863.

THE UNITED STATES,

Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.

OPINION.

These cases are similar in many respects to those of The United States vs. The Southern Pacific Railroad Company et al., just decided. The lands involved are within the granted limits of the Southern Pacific Railroad Company, and the indemnity limits of the Atlantic & Pacific Railroad Company, and the contention on the part of the government is, that because they were within such indemnity limits they were not of the lands granted or intended to be granted to the Southern Pacific Company. In the first the defendants claim under the Southern Pacific Railroad Company, and are charged to be committing trespasses upon the lands, and the relief sought is, as in the two prior cases, to quiet the title of the plaintiff and to restrain the trespasses. In the sec-

ond a patent has been issued, and the legal title conveyed to the railroad company, and the relief sought is the cancellation of that patent, and a decree establishing the title of the government. In this case there is a further contention on the part of the government, and that is that the lands were sub judice at the time of the definite location of the Southern Pacific Company's road, inasmuch as they were within the exterior boundaries of a Mexican land grant known as the Rancho San Jose, as those boundaries were marked on the surface of the ground by one of two official surveys, the accuracy of neither of which had then been determined. Decrees were entered below in favor of the defendants, dismissing the bills; from which decrees the government has appealed to this Court. (See 39 Fed. Rep. 132; 40 Id. 611; 45 Id. 596; 46 Id. 683.)

Mr. Justice BREWER delivered the opinion of the Court.

The ordinary rule with respect to lands within indemnity limits is, that no title passes until selection. Where, as here, the deficiency within the granted limits is so great that all the indemnity lands will not make good the loss, it has been held, in a contest between two railroad companies, that no formal selection was necessary to give them to the one having the older grant, as against the other company. (St. Paul & Pacific R. R. Co. vs. Northern Pacific R. R. Co., 139 U. S. 1.) And if the Atlantic & Pacific Company had constructed its road, it would be difficult in the light of that decision to avoid the conclusion that all the lands within the indemnity limits passed to that company. But this case does not

rest upon that proposition. One thing which distinguishes the grant of 1871 to the Southern Pacific Railroad Company from most, if not all other, land grants is the proviso somewhat considered in the opinion in the former cases, and which reads: "Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company, or any other railroad company."

What is the significance of this proviso? Without it, certainly, The Southern Pacific, its grant being of later date, would be postponed to the Atlantic and Pacific; and on the filing by each company of a map of definite location, the title to the lands within the granted limits would vest in the Atlantic and Pacific Company, to the total and absolute exclusion of all claims on the part of the Southern Pacific. The proviso, therefore, was without significance, in respect to such lands. It in no manner strengthened the title of the Atlantic and Pacific, and took nothing away from the Southern Pacific. Yet it cannot be supposed that this proviso was meaningless, and that Congress intended nothing by it. Carefully inserted, in a way to distinguish this grant from ordinary later and conflicting grants, it must be held that Congress meant by it to impose limitations and restrictions different from those generally imposed in such cases, and it in substance declared that the Southern Pacific Company should not in any event take lands to which any other company had at the time a present or prospective right. As it could have no effect upon the lands within the granted limits, it must have been intended to have

some effect upon those within the indemnity limits, they being the only lands upon which it could operate.

What were the prospective rights of the Atlantic & Pacific Company? Of course, it could not be known at the time of the passage of the later act exactly where the lines of the two companies would be located, and where the point of crossing would be. Neither could it then be known that there would be any deficiency in the granted lands at the point of crossing, or that, if such deficiency existed, it would require all the indemnity lands to make good the loss. It might well be assumed that very likely the Atlantic & Pacific Company would be called upon to select from the indemnity lands a portion sufficient to make good the deficiency in the granted limits. That right of selection was a prospective right, and if it was to be fully exercised, no adverse title could be created to any lands within the indemnity limits. Suppose, for instance, it should turn out that only half of the indemnity lands were necessary to make good the deficiency, and that one-half of such lands were well watered and valuable, while the remainder were arid and comparatively valueless, obviously the right of selection would be seriously impaired if it were limited to only the arid and valueless tracts. In fact, every withdrawal of lands from the aggregate of those from which selection could be made would more or less impair the value of the right of selection. The only way in which force can be given to this proviso is to hold that the indemnity lands of the Atlantic and Pacific were exempted from the grant to the Southern Pacific, for, if not exempted, the former

company's prospective right of selection would be to that extent impaired. It must be borne in mind that these lands were in the granted limits of the Southern Pacific, and that they are not lands in respect to which that company would have a right of selection, and might defer the exercise of that right until such time as suited it. Being within the granted limits of the Southern Pacific, all its rights thereto vested at once, at the time of the filing of the map of definite location, and were not and could not be added to after that time; everything it could have in those lands, it had then, and at that time there was an existing prospective right on the part of the Atlantic & Pacific Company to make a selection. That prospective right would be impaired by the transfer of the title of a single tract to the Southern Pacific. Hence, it follows that the title to none of these indemnity lands passed or could pass to the Southern Pacific Company.

In this aspect of the case it becomes unnecessary to inquire whether the lands described in the second case were sub judice or not. If they were sub judice, they could not pass to either company; and if they were not, the Atlantic and Pacific's prospective right of selection prevented the passing of title to the Southern Pacific.

The decrees in both cases will be reversed, and the cases remanded with instructions to enter decrees in favor of the government for the relief sought.

Supreme Court of the United States.

I, James H. McKenney, clerk of the Supreme Court of the Supreme Court of the United States, do hereby certify that the foregoing printed pages numbered from one to

three, inclusive, contain a true copy of the opinion of the said Supreme Court of the United States in the cases of The United States, appellant, vs. The Colton Marble and Lime Company, O. T. Dyer et al., and The United States, appellant, vs. The Southern Pacific Railroad Company et al., Nos. 862 and 863, October term, 1892, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this twenty-first day of July, A. D. 1893.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

[Seal]

[Endorsed]: United States Circuit Court, Southern District of California. United States of America vs. Southern Pacific Railroad Company et al. 184. Master's and examiner's Exhibit No. 43. E. H. Lamme, Master and examiner in chancery. For complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 34. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 35.

Opinion of the United States Supreme Court in case No. 177, on docket of Circuit Court for the Southern District of California, being No. 921 on docket of the United States Supreme Court (Plaintiff's Exhibit 42, before Examiner Lamme n case No. 184).

Appeals from the Circuit Court of the United States for the Southern District of California. (December 12, 1892.)

Supreme Court of the United States.

October Term, 1892.

UNITED STATES, Appellant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, and OTHERS.

Nos. 921 and 922.

OPINION.

On July 27, 1866, Congress passed an act granting lands to aid in the construction of a railroad from the States of Missouri and Arkansas to the Pacific Coast. (14 Stat. 292.) By the first section, a corporation to be known as the Atlantic & Pacific Railroad Company was created, and authorized to construct and operate a road from a point near the town of Springfield, in the State of Missouri, westward through Albuquerque, "and thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado river, at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific." The third section making the land grant is, so far as touching any question in this case is concerned, as follows:

"Sec. 3: That there be, and hereby is, granted to the Atlantic & Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of

said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the secretary of the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers. Provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, so far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act"

The eighteenth section was in these words:

"Sec. 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic & Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic & Pacific Railroad herein provided for."

On March 3, 1871, Congress passed an act (16 Stat. 573) to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, the twenty-third section of which act reads:

"That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions, as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866. Provided, however, that this section shall in no way affect or impair the rights, present or prespective, of

the Atlantic & Pacific Railroad Company, or any other railroad company."

Under the act of July, 1866, the Atlantic & Pacific Company proceeded to construct a part of its road, but did no work west of the Colorado river, the east line of the State of California. It did, however, file maps of that which it claimed to be its line of definite location from the Colorado river to the Pacific Ocean, which, on April 11, 1872, and August 15, 1872, were accepted and approved by the secretary of the interior. On July 6, 1886, Congress passed this act of forfeiture:

"An act to forfeit the lands granted to the Atlantic & Pacific Railroad Company, etc.

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled. That all the lands, excepting the right of way and the right, power, and authority given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side-tracks, turn-tables, and water stations, heretofore granted to the Atlantic & Pacific Railroad Company by an act entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast,' approved July twenty-seventh, eighteen hundred and sixty-six, and subsequent acts and joint resolutions of Congress, which are adjacent to and coterminous with the uncompleted portions of the main

line of said road, embraced within both the granted and indemnity limits, as contemplated to be constructed under and by the provisions of said act of July twenty-seventh, eighteen hundred and sixty-six, and acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph, be and the same are hereby declared forfeited and restored to the public domain." (24 Stat. 123.)

On April 3, 1871, just a month after the passage of the act of March 3, the defendant, The Southern Pacific Company, filed a map of its route from Tehachapa Pass by way of Los Angeles to the Texas Pacific Railroad, and proceeded to construct its road, and finished the entire construction some time during the year 1878. Its road crossed the line, as located, of the Atlantic & Pacific Company. The lands in controversy in these cases are within the granted or place limits of both the Atlantic & Pacific and The Southern Pacific Companies at the place where these lines cross. As The Atlantic & Pacific Company did not construct its line, and as its rights were subsequently forfeited by Congress, and as The Southern Pacific Company did construct its line, the latter claimed that by virtue of its grant and the construction of its road these lands became its property. It was to test this claim of title, and to restrain trespasses by the railroad company, and those claiming under it, on the lands, that these actions were brought in the Circuit Court of the United States for the Southern District of California. In that court the decisions were in favor of the defendants, and decrees entered dismissing the bills, from which decrees

the government brought its appeal to this court. (See 39 Fed. Rep. 132; 40 Id. 611; 45 Id. 596; 46 Id. 683.)

Mr. Justice BREWER delivered the opinion of the court.

The question to be considered is not as to the validity of the grant to the Southern Pacific Company, but only as to its extent. It may be conceded that the company took title to lands generally along its line, from Tehachapa Pass to its junction with the Texas Pacific; and the contention of the government is here limited to those lands only which lie within the granted limits of both The Atlantic & Pacific and The Southern Pacific Companies, at the crossing of their lines, as definitely located. As it appears from the record that, at the time of the location of the former company's line, so many of the tracts within these overlapping limits had been taken up by preemption and homestead entries that the indemnity limits were not large enough to supply its deficiency, it is obvious that the land to be affected by this decision is of limited area in comparison with the large body of lands covered by the grant to The Southern Pacific.

The contention of the government is, that these lands were not included within the grant to The Southern Pacific. Such contention implies no want of good faith on its part. It is not attempting to take back or forfeit that which it has once granted. It is only seeking, a difference of opinion having arisen, an adjustment, a determination of the extent of its grant. Less than that could not be expected; more than that could not be asked of it.

The grants to both the Atlantic & Pacific and The Southern Pacific Companies were grants in praesenti. The language is, "there be, and hereby is, granted." The construction and effect of such words of grant have often been considered by this court. In the recent case of St. Paul & Pacific Railroad Company v. Northern Pacific Railroad Company, (139 U. S. 1, 5,) Mr. Justice Field, speaking for the court, said: "As seen by the terms of the third section of the act, the grant is one in praesenti; that is, it purports to pass a present title to the lands designated by alternate sections, subject to such exceptions and reservations as may arise from sale, grant, preemption, or other disposition previous to the time the definite route of the road is fixed. The language of the statute is, 'that there be, and hereby is, granted' to the company every alternate section of the lands designated, which implies that the property itself is passed, not any special or limited interest in it. The words also import a transfer of a present title, not a promise to transfer one in the future. The route not being at the time determined, the grant was in the nature of a float, and the title did not attach to any specific sections until they were capable of identification; but when once identified the title attached to them as of the date of the grant, except as to such sections as were specifically reserved. It is in this sense that the grant is termed one in praesenti; that is to say, it is of that character as to all lands within the terms of the grant, and not reserved from it at the time of the definite location of the route. This is the construction given to similar grants by this court, where the question

has been often considered; indeed, it is so well settled as to be no longer open to discussion. (Schulenberg v. Harriman, 21 Wall. 44, 60; Leavenworth, Lawrence etc. Railroad Co. v. United States, 92 U. S. 733; Missouri, Kansas etc. Railroad Co. v. Kansas Pacific Railway Co., 97 U. S. 491; Railroad Co. v. Baldwin, 103 U. S. 426.) The terms of present grant are in some cases qualified by other portions of the granting act, as in the case of Rice v. Railroad Co. (1 Black, 358), but unless qualified they are to receive the interpretation mentioned."

In view of this late and clear declaration, it would be a waste of time to attempt a re-examination of the questions, or a restatement of the reasons which have established these as the settled rules of law in respect to land grants, and made it so that the old common law rule as to the necessity of identification to a conveyance has not been controlling in determining the scope and effect of a Congressional land grant. Yet reference may be had to the still later case of Bardon v. Northern Pacific R. R. Co. (145 U. S. 535), in which the doctrine that title passes by relation as of the date of the grant was held to exclude from a grant land which, at the date of the act, was held under a homestead claim, although the claim had been abandoned, and the land restored to the public domain before the filing of the map of definite location. It may also not be amiss to notice the case of Schulenberg v. Harriman (21 Wall. 44). In that case land had been granted to ... State of Wisconsin, to aid in the construction of a railroad. The language of the grant was like that in this: "There be, and is hereby, granted." A fur-

ther provision was that if the road be not completed within ten years, "no further sales shall be made, and the lands unsold shall revert to the United States." The railroad was not completed within the time specified. Thereafter timber was cut and removed from these lands, and the question for consideration was as to the ownership of that timber. It was held that the timber was the property of the State; that by the grant, title to the land passed to the State upon the location of the route; and that, though the road was not completed within the time specified, and though there was the provision that the unsold lands should revert, yet the title still remained in the State, held under a condition subsequent, and held until the government should take some steps to assert a forfeiture.

Applying these well-settled rules to the cases at bar, there can be little difficulty in arriving at a conclusion. The grant to the Atlantic and Pacific was made in 1866; to the Southern Pacific in 1871. They were grants in praesenti. When maps of definite location were filed and approved, the grants severally took effect by relation as of the dates of the acts. The map of definite location of the Atlantic and Pacific Company's road along the lands in controversy was filed and approved on April 11, 1872. Then the specific tracts were designated, and to them the title of the Atlantic and Pacific attached as of July 27, 1866. If anything in the land laws of the United States can be considered as thoroughly settled by repeated decisions, it is this. It matters not when the map of definite location of the Southern Pacific was filed and approved,

whether before or after April 11, 1872; for when filed the grant could take effect by relation only as of March 3, 1871, and at that time, and for nearly five years theretofore, the title to these lands had been in the Atlantic and Pacific. It matters not that the act of 1871 in terms purports to bestow the same rights, grants and privileges as were granted to the Southern Pacific Railroad Company by the act of 1866. That merely defines the extent of the grant and the character of the rights and privileges; it does not operate to make the latter grant take effect by relation as of the date of the prior grant, and thus subject the grants to the two companies to the rule controlling contemporaneous grants, as established by St. Paul etc. R. R. Co. v. Winona etc. R. R. Co. (117 U. S. 720), and Sioux City R. R. v. Chicago Ry. Co. (117 U. S. 406). Even if Congress had in terms expressed an intent to that effect in a subsequent act, it was not competent, by such legislation, to divest the rights already vested in the Atlantic and Pacific Company. So the case, in the best way of putting it for the defendant, is the case of two companies with conflicting grants, each of whose line of definite location has been approved by the Land Department. Unquestionably, the grant older in date takes the land.

Some stress seems to have been laid in the court below on the proviso to the act of 1871, which reads: "Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company." But the language of this proviso is negative and restrictive, and not affirmative and enlarging. It says

substantially that nothing in the grant to the Southern Pacific shall affect or impair other grants. Surely the declaration that this grant does not affect some other grant does not make this grant any larger than it would have been without that declaration. It simply prevents it from having any effect, which, but for the declaration, it might be supposed to have on something else. If without those words it could take nothing granted to the Atlantic and Pacific, a fortiori with them it takes nothing.

But it is urged by counsel for defendant that no map of definite location of line between the Colorado River and the Pacific Ocean was ever filed by the Atlantic and Pacific or approved by the Secretary of the Interior. This contention is based upon these facts: The Atlantic and Pacific Company claimed that, under its charter, it was authorized to build a road from the Colorado River to the Pacific Ocean, and thence along the coast up to San Francisco; and it filed maps thereof in four sections. San Buenaventura was the point where the westward line first touched the Pacific Ocean. One of these maps was of that portion of the line extending from the western boundary of Los Angeles county, a point east of San Buenaventura, and through that place to San Miguel Mission, in the direction of San Francisco. In other words, San Buenaventura was not the terminus of any line of definite location from the Colorado River westward, whether shown by one or more maps, but only an intermediate point on one sectional map. When the four maps were filed, and in 1872, the Land Department, holding

that the Atlantic and Pacific Company was authorized to build not only from the Colorado River directly to the Pacific Ocean, but also thence north to San Francisco, approved them as establishing the line of definite location. Subsequently, and when Mr. Justice Lamar was secretary of the interior, the matter was re-examined, and it was properly held that, under the act of 1866, the grant to the Atlantic and Pacific was exhausted when its line reached the Pacific Ocean. San Buenaventura was, therefore, held to be the western terminus, and the location of the line approved to that point. The fact that its line was located, and maps filed thereof in sections, is immaterial. (St. Paul & Pacific R. R. Co. v. Northern Pacific R. R. Co., 139 U. S. 1.) Indeed, all the transcontinental roads, it is believed, filed their maps of route in sections. So the question is whether the filing a map of definite location from the Colorado River through San Buenaventura to San Francisco, under a claim of right to construct a road the entire distance, is good as a map of definite location from the Colorado River to San Buenaventura, the latter point being the limit of the grant. We think, unquestionably, it is. Though a party claims more than he is legally entitled to, his claim ought not to be rejected for that to which he has a right. The purpose of filing a map of definite location is to enable the Land Department to designate the lands passing under the grant; and when a map of such a line is filed, full information is given, and, so far as that line may legally extend, the law perfects the title. It surely cannot be that a company must determine at its peril the extent to which its grant

may go, or that a mistake in such determination works a forfeiture of all its rights to lands.

In this connection, reference may be had to the contention of the Southern Pacific Company, that it filed its map of definite location on April 3, 1871, more than a year before the filing of its map by the Atlantic and Pacific Company; that, therefore, its title then attached to these lands, the same as to any other lands along its line; and that, if such title was displaced by any subsequent filing of the Atlantic and Pacific Company's map, it was only conditionally displaced—that is, displaced on condition that the Atlantic and Pacific Company should by the final completion of its road, perfect its right thereto. But whatever title or right the Southern Pacific Company might acquire by a prior filing of its map was absolutely displaced when the Atlantic and Pacific Company's map was filed. Illy as it may accord with the common-law notions of identification of tracts as essential to a valid transfer of title, it is fully settled that we are to construe these acts of Congress as laws as well as grants; that Congress intends no scramble between companies for the grasping of titles by priority of location, but that it is to be regarded as though title passes as of the date of the act, and to the company having priority of grant, and, therefore, that in the eye of the law it is now as though there never was a period of time during which any title to these lands was in the Southern Pacific. As said in the case of Mo. etc. Ry. Co. v. Kan. Pac. Ry. Co. (97 U. S. 491, 497):

"It is always to be borne in mind, in construing a Congressional grant, that the act by which it is made is a

law as well as a conveyance, and that such effect must be given to it as will carry out the intent of Congress. That intent should not be defeated by applying to the grant the rules of the common law, which are properly applicable only to transfers between private parties. To the validity of such transfers it may be admitted that there must exist a present power of identification of the land; and that where no such power exists, instruments, with words of present grant, are operative, if at all, only as contracts to convey. But the rules of the common law must yield in this, as in all other cases, to the legislative will."

So now, whatever may have been the dates of filing by the respective companies, the case stands as though the lands granted to the Atlantic and Pacific had been identified in 1866, and title had then passed, and there never was a title of any kind vested in the Southern Pacific Company.

And whatever of plausibility there might be in this suggestion of counsel, based upon the old common-law rules in respect to the effect of a lack of identification upon attempted conveyances between private parties, it fails entirely because its map of definite location was not filed by the Southern Pacific Company until long after the filing by the Atlantic and Pacific Company. It is true that the bills of complaint in these cases allege that "said Southern Pacific Railroad Company accepted said grant, and on April 3, 1871, did designate the line of its said road by a plat thereof, which it on that day filed in the office of the Commisioner of the General Land Office, and

did construct and complete said road in the manner and within the time prescribed, except that it did not connect with the Texas and Pacific Railroad, and on April 3, 1871, the odd sections of public land for thirty miles in width on each side of said route, to which the United States had full title, not reserved, sold, granted, appropriated, and free from all claims and rights, were, by the Department of the Interior, ordered withdrawn from sale and entry and reserved."

This allegation apparently refers by its terms to the line of definite location, as provided for in section 3 of the act of July 27, 1866, inasmuch as it uses the words of that section, towit, "at the time the line of said road is designated by a plat thereof." And if this were a matter vital to the case, it might be necessary to require that the bill be amended to conform to the proof, though it may be remarked that the allegation in the last part of the clause quoted, in respect to the withdrawal of lands, seems to indicate that the map of general route rather than that of general location was referred to.

The distinction between the line of definite location and the general route is well known. It was clearly pointed out in the case of Buttz v. Northern Pacific Railroad Co. (119 U. S. 55). The act under consideration in that case was that of July 2, 1864 (13 Stat. 365), making a grant to the Northern Pacific Railroad Company. The third section of that act, as the third of this, made the grant, and provided for the line of definite location. Section 6 authorized the fixing of the general route, and its language in respect to that matter is the same as that of

section 6 of the act before us. It reads: "That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry," etc. Referring to this matter, it was said in the opinion in that case, on pages 71 and 72: "The act of Congress not only contemplates the filing by the company, in the office of the Commissioner of the General Land Office, of a map showing the definite location of the line of its road, and limits the grant to such alternate odd sections as have not, at that time, been reserved, sold, granted, or otherwise appropriated, and are free from pre-emption, grant, or other claims or rights; but it also contemplates a preliminary designation of the general route of the road, and the exclusion from sale, entry, or pre-emption of the adjoining odd sections within forty miles on each side, until the definite location is made. . . . . The general route may be considered as fixed when its general course and direction are determined after an actual examination of the country or from a knowledge of it, and is designated by a line on a map showing the general features of the adjacent country and the places through or by which it will pass. The officers of the Land Department are expected to exercise supervision over the matter so as to require good faith on the part of the company in designating the general route, and not to accept an arbitrary and capricious selection of the line irrespective of the character

of the country through which the road is to be constructed. When the general route of the road is thus fixed in good faith, and information thereof given to the Land Department by filing the map thereof with the Commissioner of the General Land Office, or the Secretary of the Interior, the law withdraws from sale or pre-emption the odd sections to the extent of forty miles on each side. The object of the law in this particular is plain; it is to preserve the land for the company, to which, in aid of the construction of the road, it is granted. Although the act does not require the officers of the Land Department to give notice to the local land officers of the withdrawal of the odd sections from sale or pre-emption, it has been the practice of the department in such cases, to formally withdraw them."

As the act of July 27, 1866, the one before us, is in these respects exactly like that of the one before the court in that case, it must be held that here, as there, Congress provided for two separate matters; one the fixing of the general route, and the other the designation of the line of definite location; and an examination of the evidence shows that the map which was filed on April 3, 1871, was simply one of general route, and therefore did not work a designation of the tracts of land to which the Southern Pacific's grant attached. As the map was filed within one month after the grant, it might be inferred that there had not been sufficient time to fix the line of definite location, though, of course, it would be possible, as counsel suggests, that the company had surveyed the line in anticipation of the grant, and the matter of time would not

be decisive. But turning to the map itself, a copy of which is in evidence, we find that this is the certificate made thereon by the Southern Pacific Company:

"To Hon. C. Delano, Secretary of the Interior, and Hon. Willis Drummond, Commissioner of the General Land Office:

"Please to take notice that this map is filed by the Southern Pacific Railroad Company, of California, in the office of the commissioner of the general land office, in the department of the interior, for the purpose of designating by the heavy red line traced thereon the general route of the line of railroad, as near as may be, from a point at or near Tehachapa Pass, by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, adopted by the said Southern Pacific Railroad Company in pursuance of the power and authority granted to said company by the twenty-third section of the act of Congress of the United States, entitled 'An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes,' approved March 3, 1871, and in pursuance of the provisions of the act of July 27, 1866, referred to in said twenty-third section, and for the purpose of obtaining the benefit of the provisions of said acts of Congress.

"CHAS. CROCKER,

"President, Southern Pacific Railroad Company."

Not only that, but upon the filing of the map, and on April 21, 1871, the commissioner of the general land office sent to the receiver at Los Angeles a letter making a

direction of withdrawal, in which he says, referring to this matter: "The company having filed a diagram designating the general route of said road, I herewith transmit a map showing thereon the line of route, as also the 20 and 30-mile limits of the grant, to the line of withdrawal for the Southern Pacific Railroad under the act of 1866, and you are hereby directed to withhold from sale or location, pre-emption, or homestead entry all the odd-numbered sections falling within those limits."

Further, there is in evidence an exemplification of a diagram in the land office, showing the limits of the grant to the Atlantic & Pacific Company, with the intersecting limits of the grant to the Southern Pacific Company, on which diagram appears two lines, one traced in blue, and marked "branch of the Southern Pacific Railroad," and the other in red, somewhat divergent therefrom, marked "Southern Pacific Railroad, definite location." Still further on, the minutes of the proceedings of meetings of the directors of the Southern Pacific road, held on April 10, September 8, and October 1, 1874, appear resolutions similar in their character, but having reference to different parts of the line between Tehachapa Pass and the Texas Pacific Railroad.

The one passed at the meeting on April 10, 1874, is in these words:

"Resolved, That the line of railroad as it has been surveyed and laid out on map marked 'A A,' and described as follows: Commencing at a point in the northwest quarter (N.-W. ¼) of section ——— (3), township two (2) north, range (15) west, San Bernardino base and meridian, and

running thence in a southeasterly direction to the city of Los Angeles, and thence in an easterly direction to a point in the northeasterly quarter (N.-E. ¼) of section twenty-seven (27), township one (1) south, range nine (9) west, San Bernardino base and meridian, being map and profile of section No. one, Southern Pacific Railroad and telegraph line authorized by the twenty-third section of the Texas Pacific Railroad act, approved March 3, 1871, be and the same is hereby, adopted as the route of said railroad between the points named.

"(Signed) J. L. WILLCUTT, Secty."

So, only at these late days was the line of definite location determined upon by the company. Of course, therefore, the map filed April 3, 1871, could not have been a map of that line, but was, as it states, only of the general route and there was then no designation of lands to which the Southern Pacific Company's title could attach.

On the other hand, the Atlantic & Pacific Company did file its maps of definite location. This appears from the certificates thereon. In the one covering the line along the lands in controversy, the chief engineer of the company certifies that E. N. Robinson was a deputy engineer, and that the latter, "as shown by his field notes, did actually survey and mark upon the ground, or cause to be surveyed and marked upon the ground, the line or route of the Atlantic & Pacific Railroad," etc., as delineated upon the map; and that his acts in the premises were duly approved and accepted on behalf of the company, by himself as chief engineer. And in the further official certifi-

cate of the company it is stated that the "map shows the line or route of the said Atlantic & Pacific Railroad in the county . . . . being a part of the line or route of said railroad, as definitely fixed in compliance with said acts of Congress," etc. These maps were received and approved by the land department as maps of definite location. It follows that in fact the line of definite location of the Atlantic & Pacific was established, and maps thereof filed and approved before any action in that respect was taken by the Southern Pacific Company. There never was a time, therefore, at which the grant of the Southern Pacific could be said to have attached to these lands; and the plausible argument based thereon made by counsel in behalf of the Southern Pacific Company falls to the ground.

Again, it is urged that the grant to the Atlantic & Pacific having been forfeited, there is nothing now in the way of the Southern Pacific's grant attaching to these lands; that in the interpretation of rights under land grants, regard has always been had by this court to the intention of Congress; that it was the intention of Congress that these lands should pass to some company to aid in the construction of a railroad, either the Atlantic & Pacific or the Southern Pacific; that they cannot now be applied to aid in the construction of the former company's road; and that, therefore, to carry into effect the intent of Congress, they should be applied to aid in the construction of the latter company's line. We think this contention is erroneous, both as to the law and the intent of Congress. It was held in the case of Kansas Pacific Railway

Company v. Dunmeyer (113 U. S. 629), that, where a homestead right had attached to a tract at the time of the definite location of the railway company's line, which homestead was afterwards abandoned, the tract was simply restored to the public domain, and did not pass to the railway company under its grant that the grant only attached to lands which were the subject of grant at the time; and that the company had no interest in the question as to what afterwards became of a tract which was not public land at the time its grant became fixed. On page 644 the court observed: "The right of the homestead having attached to the land, it was excepted out of the grant as much as if in a deed it had been excluded from the conveyance by metes and bounds." The same doctrine was affirmed in Hastings & Dakota R. R. Co. v. Whitney (132 U. S. 357), Sioux City etc. Land Company v. Griffey (143 U. S. 32), Bardon v. Northern Pacific R. R. Co. (145 U. S. 535).

Neither can it fairly be said that it was the intent of Congress that these lands should pass conditionally to the Southern Pacific Company. Good faith must be imputed to Congress. It cannot be supposed that Congress intended to give to the Southern Pacific Company that which it had already given to the Atlantic & Pacific Company. It knew that it had granted lands to the Atlantic & Pacific for a road to the Pacific Ocean, and that that company was then engaged in constructing its road, and proceeding with as much rapidity as other Pacific companies had done. Within little over a month from the date of this grant to the Southern Pacific Company, and

on April 20, 1871, it gave to the Atlantic & Pacific Company authority to issue bonds secured by a mortgage on its road, equipment, lands, franchises, privileges, etc. (17 Stat. 19). Congress, therefore, was expecting that the Atlantic & Pacific Company would construct its road, and, with this expectation, had no thought of giving to the Southern Pacific Company that which it had already given to the Atlantic & Pacific Company.

Further, as indicating the intent of Congress, reference may be had to the first proviso to section 3 of the act of 1866, which, by the terms of section 18 of that act and the act of 1871, becomes one of the conditions of the grant to the Southern Pacific Company. That proviso is: "Provided, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act." That proviso may not be technically and strictly applicable to this case, in that a road crossing another may perhaps not be said to be found upon the line of such other road, or to be upon the same general line, yet the import of this proviso is clear, to the effect that Congress was not only not intending to give to one company that which it had already given to another, but intended that lands previously granted should be definitely excepted from the later grant.

Not only that, but by section 9 of the original act it was provided "that if the Atlantic & Pacific make any breach

of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road." In other words, the intent of Congress was that this road to the Pacific should be built; that if there was any delay on the part of the Atlantic & Pacific Company, it might itself take all needful and necessary measures to accomplish the building· and to that end, of course, use all the lands it proposed to grant therefor. Can it be supposed that this purpose of Congress was forgotten, or that its intent was changed when it made the grant to the Southern Pacific, or that it had anything in contemplation other than that after the completion of the Atlantic & Pacific road, and the appropriation of the lands along its line to aid in that construction, the Southern Pacific Company might, if it saw fit to build a road from Tehachapa Pass to the Texas & Pacific Railroad, obtain the remainder of the lands along that line?

Indeed, the intent of Congress in all railroad land grants, as has been understood and declared by this court again and again, is that such grant shall operate at a fixed time, and shall take only such lands as at that time are public lands, and, therefore, grantable by Congress, and is never to be taken as a floating authority to appropriate all tracts within the specified limits which at any subsequent time may become public lands. The question is asked, supposing the Atlantic & Pacific Company had never located its line west of the Colorado River, would

not these lands have passed to the Southern Pacific Company under its grant? Very likely that may be so. The language of the Southern Pacific Company's grant is broad enough to include all lands along its line, and if the grant to the Atlantic & Pacific Company had never taken effect, it may be that there is nothing which would interfere with the passage of the title to the Southern Pacific Company.

But that is a matter of result from the happening of something neither intended nor expected. While it may have been within the knowledge of Congress as among the possibilities, that result was not the purpose sought to be accomplished by this legislation. If any other than the general rule as to land grants had been intended, it is to be expected that such intention would have been clearly expressed. So when intent is to be considered the question is whether Congress intended, the title having once vested in the Atlantic & Pacific, that the Southern Pacific Company should stand waiting to take the lands at some future time, however distant, when the Atlantic & Pacific Company's title should fail.

Again, there can be no question, under the authorities heretofore cited, that, if the act of forfeiture had not been passed by Congress, the Atlantic & Pacific could yet construct its road, and that, constructing it, its title to these lands would become perfect. No power but that of Congress could interfere with this right of the Atlantic & Pacific. No one but the grantor can raise the question of a breach of a condition subsequent. Congress, by the act of forfeiture of July 6, 1886, determined what should

become of the lands forfeited. It enacted that they be restored to the public domain. The forfeiture was not for the benefit of the Southern Pacific; it was not to enlarge its grant as it stood prior to the act of forfeiture. It had given to the Southern Pacific all that it had agreed to in its original grant; and now finding that the Atlantic & Pacific was guilty of a breach of a condition subsequent, it elected to enforce a forfeiture for that breach, and a forfeiture for its own benefit.

Our conclusions, therefore, are, that a valid and sufficient map of definite location of its route from the Colorado River to the Pacific Ocean was filed by the Atlantic & Pacific Company, and approved by the Secretary of the Interior; that by such act the title to these lands passed, under the grant of 1866, to the Atlantic & Pacific Company, and remained held by it subject to a condition subsequent until the act of forfeiture of 1886; that by that act of forfeiture the title of the Atlantic & Pacific was retaken by the general government, and retaken for its own benefit, and not that of the Southern Pacific Company; and that the latter company has no title of any kind to these lands.

The decrees of the Circuit Court must be reversed, and the cases remanded with instructions to enter decrees for the plaintiff for the relief sought.

Supreme Court of the United States.

I, James H. McKenney, Clerk of the Supreme Court of the United States, do hereby certify that the foregoing printed pages numbered from one to eleven, inclusive,

CLERK'S OFFICE 399

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 152 18

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, TRUSTEES, AND THE CENTRAL TRUST COMPANY, OF NEW YORK,

Appellants,

VS.

THE UNITED STATES OF AMERICA,

Appellee.

VOLUME III

(PAGES 851 to 1200 Inclusive)

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

3996

No. 494

IN THE

UNITED STATES CIRCUIT COURT OF APPEA

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, Trustees, AND THE CENTRAL TRUST COMPANY, OF NEW YORK,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

VOLUME 3

(PAGES 851—1300 Inclusive.)

Appeal from the Circuit Court of the United States for the Southern District of California.

contain a true copy of the opinion of the said Supreme Court of the United States in the cases of The United States, appellant, vs. The Southern Pacific Railroad Company et al., Nos. 921 and 922, October term, 1892, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this twenty-first day of July, A. D. 1893.

[Seal]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed]: U. S. Cir. Court, Southern District of California, United States vs. S. P. R. R. Co. No. 184. Master's and Examiner's Exhibit No. 42. E. H. Lamme, Master and Examiner. In Chancery for Complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

U. S. Circuit Court, Ninth Circuit, Southern District of California. U. S. vs. S. P. R. R. Co. et al. No. 600. Plaintiff's Exhibit No. 35. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 36.

Decision of June 8, 1892, by secretary of the interior in case of the Southern Pacific Railroad Company vs. Milton McWharter (Plaintiff's Exhibit 35, before examiner Lamme, in case No. 184.)

"F." (4-207.) W. J. M.

M. N.

Department of the Interior,

General Land Office.

Washington, D. C., June 20, 1893.

I, Edw. A. Bowers, acting commissioner of the general land office, do hereby certify that the annexed copy of departmental decision of June 8, 1892, in the case of the Southern Pacific R. R. Co. v. Milton McWharter, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

ED. A. BOWERS,

Acting commissioner of the general land office.

[Seal]

6731 b—2 m.

Copy.

Refer in reply to this initial:

Vol. 15, 737.

Department of the Interior.

Washington, D. C., June 8, 1892.

Address only the Commissioner of the General Land Office.

SOUTHERN PACIFIC R. R. Co.,

vs.

MILTON McWHARTER.

DECISION.

The Commissioner of the General Land Office:

Sir: I have considered the appeal by the Southern Pacific Railroad Company from your decision of May 1, 1891, reversing the action of the local officers in rejecting the final proof tendered by Milton McWharter upon his pre-emption filing covering the northeast one-quarter of section 17, township 17 south, range 16 east, Visalia land district, California, for conflict with the grant for the Southern Pacific Railroad Company.

On January 3, 1867, said company filed in your office a map showing the line of its proposed road, under the act of July 27, 1866 (14 Stats., 292), upon which a withdrawal was ordered March 22, 1867, of all the odd sections falling within both the primary and indemnity limits of the grant.

The third or granting section of the act of 1866 is as follows:

That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of

said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the secretary of the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers.

The 6th section provides:

That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this act; but the provisions of the

act of September ——, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May, twenty, eighteen hundred and sixty-two, shall be, and the same are hereby extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

The location of 1867 was designated as a map of general route.

Some question having arisen as to whether this location satisfied the requirements of the act of July 27, 1866 (supra), the joint resolution of June 28, 1870 (16 Stat., 382), authorized said company to construct its road and receive patents along the designated route indicated by the map filed in the general land office, January 3, 1867.

Without discussing the effect of said joint resolution of 1870, upon the location of 1867, i. e., in the matter of making definite that which before was but a general route—no further action appears to have been taken by the company towards locating its road opposite this land, prior to August 15, 1887.

By departmental order of that date, the order of withdrawal on acount of this grant, so far as it related to indemnity lands, was revoked and the lands not embraced in pending or approved selections were restored to entry, after due notice by publication. No selection of this tract having been made, on January 16, 1888, one John H. Maxwell made homestead entry of the same, which entry he relinquished May 22, 1890, and same day Mc-

Wharter filed pre-emption declaratory statement for the land upon which he offered final proof, and upon the rejection of the same the present case arose.

On November 12, 1889, while this tract was covered by the entry by Maxwell, the company filed a map, showing the constructed line of its road opposite this tract.

This map was by you treated as the map of definite location, and the limits of the grant were readjusted thereto, the tract in question falling within the primary limits of the grant upon that adjustment.

The company in its appeal urges, under the authority of the decision in the case of the St. Paul & Pacific Railroad Company v. Northern Pacific Railroad Company (139 U. S. 1) that the act making the grant withdrew the lands "in the forty mile limits," and that no selection was required to save the company's right of selection, it being shown that there was a deficiency in the grant.

If this be so, then there was no authority to revoke the indemnity withdrawal. The question as to the authority to revoke the withdrawal of indemnity lands on account of this grant and others of a like nature was thoroughly considered by this department prior to the revocation of such withdrawals, and rights of others attaching under such revocation have been repeatedly recognized by this department as against the claim of the company.

Southern Pacific R. R. Co. v. Meyer, 9 L. D. 250; Southern Pacific R. R. Co. v. Cline, 10 L. D. 31; Lane v. Southern Pacific R. R. Co., 10 L. D. 454; Southern Pacific R. R. Co. v. Meyer, 10 L. D. 444.

The matter would therefore seem to be stare decisis.

I deem it unnecessary to refer to the decision in the

case of the St. Paul & Pacific Railroad v. Northern Pacific Railroad Company (supra), to which counsel refer, further than to say that it has no application to the facts of this case.

I might remark in passing that if the construction insisted upon by counsel be correct, then a reservation exists ten miles beyond the indemnity limits of this grant in the States as it is limited to thirty miles on each side of the road in the selection of its indemnity.

The withdrawal contemplated by the 6th section of this act has been uniformly construed to relate only to the primary or granted lands, and the validity of any further withdrawal upon the filing of said map rests entirely upon executive action.

In the case of the Northern Pacific Railroad Company v. Miller (7 L. D. 100), it was held that the 6th section of the act of July 2, 1864 (13 Stat. 365), similar to section 6 in the act under consideration was a mandate effectually prohibiting the exercise of the executive authority to withdraw indemnity lands.

It is unnecessary at this time to pass upon the correctness of that proposition, but, after the revocation of the indemnity withdrawal, the lands were surely subject to appropriation as other public lands, and the entry by Maxwell was properly allowed.

This being so, the land was excepted from the operation of the grant, as said entry was a valid, subsisting claim at the date of the definite location, November 12, 1889, and upon the cancellation of Maxwell's entry the land embraced therein was restored to the public domain,

free from any claim under the railroad grant. Kansas Pacific Railway Company v. Dunmeyer, 113 U. S. 629.

Your decision is therefore affirmed and the record in the case is herewith returned.

Very respectfully,

JOHN W. NOBLE,

Secretary. G. C.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et al. 184. Master's and examiner's Exhibit No. 35. E. H. Lamme, master and examiner in chancery for complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 36. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 37.

Decision of Dec. 12, 1890, by secretary of the interior, in the case of William C. Morgan vs. The Southern Pacific Railroad Company (Plaintiff's Exhibit 36, before Examiner Lamme, in case No. 184.)

"F" (4—207.) W. J. M.

M. N.

Department of the Interior,

General Land Office.

Washington, D. C., June 20, 1893.

I, Edw. A. Bowers, acting commissioner of the general land office, do hereby certify that the annexed copy of

departmental decision of December 12, 1890, in the case of William C. Morgan vs. Southern Pacific Railroad Company, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

EDW. A. BOWERS,

Acting commissioner of the general land office.

[Seal]

6731 b—2 m.

Copy.

Refer in reply to this initial: 11-866.

Address only the Commissioner of the General Land Office.

Department of the Interior.

Washington, D. C., December 12, 1890.

WILLIAM C. MORGAN,

vs.

SOUTHERN PACIFIC R. R. CO.

The Commissioner of the General Land Office:

Sir: I have considered the appeal of William C. Morgan from the decision of your office of January 2, 1889, rejecting his application to make homestead entry of the east one-half of the northwest one-quarter, and west one-half of the northeast one-quarter of section 9, township 6 south, range 2 W., S. B. M., Los Angeles, California.

Morgan's application to make entry of this land bears date November 20, 1888, and was rejected by the local officers "as being in conflict with the grant to Southern Pacific Railroad Company March 3, 1871" (16 Stats., 579).

On appeal, your office affirmed their decision, and Morgan now appeals to *to* this department, alleging the following errors:

1. In refusing to allow said entry;
2. In rejecting said application; and
3. In holding that said land was reserved by reason of the application of the Southern Pacific Railroad Company to select said land as a part of its primary grant, when it appears that the land is outside the primary limits.

The map of designated route was filed in your office April 3, 1871, in accordance with which lands were withdrawn by letter of April 21, 1871, which was received at the local office on the 10th of the following May. On the 24th of July, 1876, a duly certified map was filed in the general land office showing the definite location and construction of that part of the road opposite the land in contest, and the lands were again withdrawn for the benefit of said grant. According to the first map, this land is within the indemnity limits of the grant; but, according to the second map, it is within the granted limits. Both maps show it to be either within the primary or the indemnity limits, and it was "selected by the Southern *and* Pacific Railroad Company May 25, 1883, per list 11."

Morgan was advised that the said land was within this list and claimed by the railroad company at the time he

made his application for a homestead entry of the same tract.

His application was rejected on the ground of the railroad company's claim. But he contends, through counsel, that the map of definite location filed July 24, 1876, is of no validity and that the land he claims is not within the primary limits of the grant.

The supreme court, in the case of Buttz v. Northern Pacific Railroad Company (119 U. S. 55-71), says, in effect, that the granting act not only contemplates a preliminary designation of the general route of the road, and the exclusion from sale, entry or pre-emption of the adjoining odd sections within forty miles on each side until the definite location is made, but it contemplates the filing by the company in the office of the commissioner of the general land office of a map showing the definite location of the line of its road, and limits the grant to such alternate odd sections as have not at that time been reserved, sold, granted, or otherwise appropriated, and are free from pre-emption, grant or other claims or rights.

The grants to the Northern Pacific and Southern Pacific are almost identical. Under the decision of the supreme court in the case above, the map of July 24, 1876, showing the definite location of the line on which the Southern Pacific Railroad opposite the land in contest was constructed, is fully authorized, and according to this map the land is within the primary limits of the grant to the said company.

The decision of your office is therefore affirmed, and the papers in the case are herewith returned.

Very respectfully,

JOHN W. NOBLE,
Secretary.

G. C.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et al. 184. Master's and examiner's Exhibit No. 36. E. H. Lamme, master and examiner in chancery for complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 37. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 38.

Letter dated Jan. 29, 1876, L. K. Lippencott, acting commissioner, to register and receiver, Los Angeles (Plaintiff's Exhibit 37 before Examiner Lamme, in case No. 184.)

"F" (4—207.) W. J. M

M. N.

Department of the Interior,
General Land Office.
Washington, D. C., June 20, 1893.

I, Edw. A. Bowers, acting commissioner of the general land office, do hereby certify that the annexed copy of

office letter, dated January 29, 1876, to the register and receiver of the United States land office at Los Angeles California, in the matter of certain selections, is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

EDW. A. BOWERS,
Acting Commissioner of the General Land Office.
[Seal]

6731 b—2 m.

Refer in reply to this initial: "F."

Address only the Commissioner of the General Land Office.

Department of the Interior.
General Land Office.
Washington, D. C., Jan. 29, 1876.

Register and receiver Los Angeles County:

Gentlemen: I am in receipt of your letters of Nov. 16, 1875, and January 7, 1876, transmitting the application of the Southern Pacific Railroad Company for the cancellation of certain State indemnity selections, and the proofs in the cases.

It appears that the claim of the State has been satisfied by the approval of other lands as "lieu lands," also that none of the tracts selected had been sold by the State prior to July 23, 1866.

I have, therefore, this day canceled the following indemnity selections, railroad No. 104, for southwest one-quarter of section 29, township 1 south, range 12 west.

Railroad No. 97 for east one-half and northeast one-quarter of section 29 and southwest one-quarter of section 20, township 1 south, range 12 west.

R. & R. No. 93 for south one-half of northeast one-quarter, and south one-half of northwest one-quarter, and northwest one-quarter of northwest one-quarter of section 8. Lots 2 and 3 of section 5. Lots 1, 2, 3, 4, 5, 6, and southeast —— of southwest one-quarter of section 6. Lots 1 and 2 of east one-half of northwest one-quarter and northeast one-quarter of section 7, township 1 south, range 12 west.

Railroad No. 90 for northeast one-quarter of section 13, township 1 south, range 12 west.

R. & R. No. 119, for lots 1, 2, 3 and 4 of east one-half of northeast one-quarter and east one-half of southeast one-quarter of section 25 of township 1 south, range 13 west.

Railroad No. 94, for lots 1, 2, 3, and 4 of east one-half of northwest one-quarter, east one-half of southwest one-quarter and east one-half of section 19, township 1 south, range 12 west, was canceled Jan. 22, 1876, as to the northeast one-quarter, south one-half of southeast one-quarter, and southeast one-quarter of southwest one-quarter and has this day been canceled as to the remaining tracts, viz., lots 1, 2, 3, 4 of the east one-half of northwest one-quarter northeast one-quarter of southwest one-quarter, and north one-half of southeast one-quarter.

The tracts in the odd numbered sections are within the limits of the grant for the Southern Pacific Railroad Com-

pany and were withdrawn April 3, 1871, and the grant took effect May 11, 1874.

The records of this office show that Predro Archimo located Agl. Coll. Scrip railroad No. 31, March 25, 1871, for the east one-half of southwest one-quarter and southwest one-quarter of southwest one-quarter of section 29, township 1 south, range 12 west, alleging settlement upon the land December 1, 1868.

Thomas Morrow located Agl. Coll. Scrip railroad No. 29, March 13, 1871, for the northeast one-quarter of section 19, township 1 south, range 12 west, alleging settlement September 6, 1869.

Samuel Franklin located Agl. Coll. Scrip R. & R. No. 26, for northeast —— of northwest one-quarter of section 9, township 1 south, range 12 west, Jan. 30, 1871, alleging settlement December 15, 1869.

William A. Symmes located Agl. Coll. Scrip R. & R. No. 17, Oct. 8, 1870, for the south one-half of southeast one-quarter and south one-half of southwest one-quarter of section 19, township 1 south, range 12 west.

Ramon Herigoyer located Agl. Coll. Scrip R. & R. No. 15 for north one-half of southwest one-quarter, and south one-half of northwest one-quarter of section 19, township one south, range 12 west, September 28, 1870, alleging settlement July 1, 1868.

Teodors Gonzales filed declaratory statement May 7, 1870, alleging settlement April 6, 1869, upon the lots 1 and 2 and east one-half of northwest one-quarter of section 7, township 1 south, range 12 west, and located Agl. Coll. Scrip R. & R., No. 82, April 29, 1873.

John Franklin made cash entry No. 50, March 9, 1871, for the east one-half of southeast one-quarter and southeast one-quarter of northeast one-quarter of section 25, township 1 south, range 13 west.

The cash entry, and the location, with one exception, were made prior to the date of withdrawal, and in each case the settlement was made long prior to that date. They will therefore be held, subject to disposal upon their merits.

From the records, it appears that the remaining tracts in the odd-numbered sections are subject to selections by the Southern Pacific Railroad Company, with the exception of the west one-half of northeast one-quarter of section 13, township 1 south, range 12 west, which has been awarded to Catherine E. Howard, and entered, as per cash entry No 298.

Natividа Ruiz filed declaratory statement for the north one-half of northwest one-quarter of section 19, township 1 south, range 12 west, March 15, alleging settlement March 7, 1870, and Benjamin F. Smith filed declaratory statement for the northeast one-quarter of section 13, township 1 south, range 12 west, March 10, 1870, alleging settlement December 31, 1868. In these two cases, the company must file, with its application to select, affidavits showing that the land was abandoned prior to the time the grant took effect.

You will note the cancellation of the indemnity selections upon your records, and notify the parties interested of this action.

Very respectfully,

L. K. LIPPINCOTT,
Acting Commissioner.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et al. 184. Master's and examiner's Exhibit No. 37. E. H. Lamme, master and examiner in chancery for complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 38. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 39.

Map showing twenty and thirty mile limits of Atlantic & Pacific Railroad Company, from township four north, range sixteen west, S. B. M., to Santa Barbara, California. (Plaintiff's Exhibit 44 before Examiner Lamme, in case No. 184.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Plaintiff's Exhibit No. 40.

Map of general route of Southern Pacific Railroad from Tehachipi Pass, by way of Los Angeles, to the Colorado river; also letter of acting secretary of the interior to the commissioner of the general land office of April 3, 1871. (Plaintiff's exhibit 45 before Examiner Lamme, in case No. 184.)

CERTIFICATE.

M. N. W. J. M.

F. (4-207 a.)

Department of the Interior.

General Land Office.

Washington, D. C., October 7, 1893.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed map is a true and literal exemplification of the one filed in this department by the president of the Southern Pacific Railroad Company, and transmitted to this office with departmental letter dated April 3, 1871, a true copy of which is attached hereto, and that both of said copies are now on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of general land office.

[Seal]

LETTER.

Ld gt R. R.

Jno R B

Department of the Interior.

Washington, D. C., April 3, 1871.

Sir:

The twenty-third section of the act to incorporate the Texas Pacific Railroad, and for other purposes, approved March 3, 1871, authorizes the Southern Pacific Railroad Company to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to "the Texas Pacific Railroad at or near the Colorado river," with the same rights and privileges, and subject to the same limitations and restrictions, as were granted to said Southern Pacific Railroad Company of California, by the act, July 27, 1866.

The accompanying map designating the route of said road from Tehachapa Pass, by way of Los Angeles to the Colorado river has been filed by Charles Crocker, Esq., president of the company, with a request that the lands may be withdrawn as provided in the twelfth section of said act, "from pre-emption, private entry and sale."

You will issue the necessary order for a withdrawal of the lands within twenty miles, and along the route designated on said map.

Very respectfully,

Your obedient servant,

WALTER H. SMITH,

Acting secretary.

Hon. Willis Drummond, commissioner of the general land office.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. 184. Master's and examiner's Exhibit No. 45. E. H. Lamme, master and examiner in chancery. For complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 40. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

MAP(S) IS/ARE TOO LARGE TO BE FILMED

Plaintiff's Exhibit No. 41.

Map of Atlantic & Pacific Railroad from west boundary line of Los Angeles county to a point in township seven north, range seven east, S. B. M., showing twenty and thirty-mile limits; also letter transmitting the same. (Plaintiff's Exhibit 48 before Examiner Lamme, in case No. 184.)

CERTIFICATE.

M. N. **W. J. M.**

F.

(4-207 a.)

Department of the Interior.

General Land Office.

Washington, D. C., Dec. 26, 1893.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed letter transmitting a diagram to the register and receiver, at Los Angeles, and ordering a withdrawal of lands in accordance therewith, is a true copy of the original of record in this office, while the annexed diagram is a true and literal exemplification of the original of the one referred to in said letter as it appears on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of general land office.

[Seal]

LETTER.

Receipt ack'd May 7, 1872. I. 98566.

Department of the Interior.

General Land Office.

April 22, 1872.

Register and Receiver, Los Angeles, Cal.

Gentlemen:

I transmit herewith a diagram showing the definite location of the Atlantic & Pacific Railroad, under act of July 27, 1866, Stat., Vol. 14, p. 292, from a point on the western boundary of Los Angeles county to a point in township 7 north, range 7 east, of the San Bernardino, in your district, showing also, the twenty and thirty-mile limits of the land grant under said act; and you are hereby directed to withhold from pre-emption or homestead entry, private sale or location all the *odd* numbered sections, falling within those limits, both surveyed and unsurveyed, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims, or rights at the time the line of said road was designated by filng a plat thereof in this office—*which was March 12, 1872.*

The even-numbered sections, within the twenty-mile limits, you will increase in price to $2.50 per acre, and dispose of them at that retability and only under the pre-emption and homestead laws. The even sections outside of the twenty-mile limits are not affected by this withdrawal. Claims initiated by settlers under the pre-emption laws prior to the right of the road attaching March 12, 1872, are not affected by this order.

Be pleased to acknowledge the receipt of this letter without delay.

Very respectfully,

WILLIS DRUMMOND,

Commissioner.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. 184. Master's and examiner's Exhibit No. 48. E. H. Lamme, master and examiner in chancery. For complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 41. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

MAP(S) IS/ARE TOO LARGE TO BE FILMED

Plaintiff's Exhibit No. 42.

LETTER.

"F" (4-207.) W. J. M.

M. N.

Department of the Interior.

General Land Office.

Washington, D. C., January 23, 1894.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of the general land office.

[Seal]

6731 b—2 m

Rect. ack'd Dec. 9, 1874.

Department of the Interior.

General Land Office.

Washington, D. C., November 23, 1874.

Register and Receiver, San Francisco, Cal.

Gentlemen:

I transmit herewith a diagram showing the completed limits of the grant to the Atlantic & Pacific Railroad Company, in your district, prepared from the map of definite location filed, in the department August 15, 1872,

by the company, and although only recently accepted, their rights must attach to the lands from that date.

You will, accordingly, withhold from sale or entry all the odd-numbered sections within the thirty-mile limits shown on the diagram, and hold the even sections within the twenty-mile limits at $2.50 per acre.

The even sections between the twenty and thirty-mile limits are not affected by the grant.

Be pleased to promptly acknowledge the receipt of this letter and diagram.

Very respectfully,

S. S. BURDETTE,
Commissioner.

[Endorsed]: 879. Department of the interior. Received Jan. 24, 1894. Exhibit 54. United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et al. 184. Master's and examiner's Exhibit No. 54. E. H. Lamme, master and examiner in chancery. For complainant.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 42. Leo. Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 43.

LETTER.

"F" (4-207.) W. J. M.

M. N.

Department of the Interior.

General Land Office.

Washington, D. C., January 23, 1894.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of the general land office.

[Seal]

6731 b—2 m

Receipt ack'd Dec. 10, 1874.

L 30846.

Department of the Interior.

General Land Office.

Washington, D. C., November 23, 1874.

Register and Receiver, Visalia, Cal.

Gentlemen:

I transmit herewith two diagrams which show the completed limits of the grant to the Atlantic & Pacific Railroad Company, in your district, prepared from the maps

of definite location of the road filed in the department, August 15, 1872, and although only recently accepted by the department, the rights of the company must attach to the lands from that date.

You will, accordingly, withhold from sale or entry, all the odd-numbered sections within the thirty-mile limits shown on the diagrams, and hold the even sections within the twenty-mile limits at $2.50 per acre.

The even sections between the twenty and thirty-mile limits, are not affected by the grant. Be pleased to promptly acknowledge the receipt of this letter and diagrams.

Very respectfully,

S. S. BURDETTE,
Commissioner.

[Endorsed]: 879. Department of the Interior. L. and R. R. Received Jan. 24, 1894. Ex. 53. United States Circuit Court, Southern District California. United States vs. Southern Pacific Railroad Company et al. 184. Master's and examiner's Exhibit No. 53. E. H. Lamme, master and examiner in chancery. For complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 43. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 44.

Letter.

"F" (4-207.) W. J. M.

M. N.

Department of the Interior.

General Land Office.

Washington, D. C., January 23, 1894.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of the general land office.

[Seal]

6731 b—2 m

Receipt ack'd May 9, 1872.

"I. 97.089.

Department of the Interior.

General Land Office.

April 22, 1872.

Register and Receiver, San Francisco, Cal.

Gentlemen:

I transmit herewith a diagram showing the definite location of the Atlantic & Pacific Rail-Road under act of July 27, 1866, Stat., Vol. 14, p. 292, from San Francisco, to San Miguel Mission, Cal., showing also the twenty and

thirty-mile limits of the land grant under said act, and you are hereby directed to withhold from pre-emption or homestead entry, private sale or location, all the odd-numbered sections, falling within those limits, both surveyed and unsurveyed, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road was designated by filing a plat thereof in this office, *which was March 12, 1872.*

The even-numbered sections within the twenty-mile limits, you will increase in price to $2.50 per acre, and dispose of them at that ratability, and only under the pre-emption and homestead laws. The even sections outside of the twenty-mile limits, are not affected by this withdrawal.

Claims initiated by settlers under the pre-emption laws, prior to the right of the road attaching, March 12, 1872, are not affected by this order.

Be pleased to acknowledge the receipt of this letter without delay.

Very respectfully,

WILLIS DRUMMOND,

Commissioner.

[Endorsed]: 879. Department of the interior. L. & R—. Received Jan. 24, 1894. Exhibit 58. United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et al. 184. Master's and examiner's Exhibit No. 55. E. H. Lamme, master and examiner in chancery. For Complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 44. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 45.

LETTER.

"F" (4-207.) W. J. M.

M. N.

Department of the Interior.

General Land Office.

Washington, D. C., January 22, 1894.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter dated May 7, 1872, from the register of the United States land office at Los Angeles to the commissioner of the general land office, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of the general land office.

[Seal]

6731 b—2 m

Mrs. P & M. N.

United States Land Office.

Los Angeles, California, May 7, 1872.

Hon. Willis Drummond, commissioner general land office,
Washington, D. C.

Sir:

I have to acknowledge the receipt of your letter "F," of date April 22, 1872, accompanying diagram showing limits of withdrawal for Atlantic & Pacific Railroad from date of March 12, 1872, and to report that the same has been duly filed in this office.

Very respectfully,
Your obedient servant,
H. C. AUSTIN,
Register.

[Endorsed]: 33. Register Los Angeles, Cal., May 7, 1872. I. 98566. 15—170. Acknowledges receipt of letter "F," of date April 22, 1872, with diagram of withdrawal for Atlantic & Pacific Railroad. No answer. Noted on records. F. May 27, 1872. 842. Department of the interior. L & R——. Received Jan. 23, 1894.

Exhibit 56. United States Circuit Court, Southern District California. United States vs. Southern Pacific Railroad Company et al. 184. Master's and examiner's Exhibit No. 56. E. H. Lamme, master and examiner in chancery. For complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 45. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 46.

LETTER.

"F" (4-207.) W. J. M.

M. N.

Department of the Interior.

General Land Office.

Washington, D. C., January 22, 1894.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter dated October 18, 1877, from the secretary of the interior to the commissioner of the general land office, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of general land office.

[Seal]

2703 b—2 m

E. M. M. B. C. T.

Department of the Interior.

Washington, Oct. 18, 1877.

Sir:

I am in receipt of your letter of the twentieth ultimo, transmitting the application of James F. Stuart, Esq., of San Francisco, California, for a restoration of the land in Southern California, withdrawn for the Atlantic & Pa-

cific Railroad Company, under instructions dated April 22, 1872, and November 23, 1874.

The grounds upon which Mr. Stuart bases his application are not specifically set forth in his letter, other than that the reservation is illegal, and in his printed argument he states: "There was no grant of Congress to this company of any lands through the State of California to base this reservation on."

Under dates of April 16, 1872, and April 16, 1874, my predecessor, Mr. Secretary Delano, approved the maps of definite location of the Atlantic & Pacific Railroad in California, filed by the officers of the company. The withdrawal above mentioned were based upon these maps.

The Southern Pacific Railroad Company of California contested the right of the Atlantic & Pacific Company, claiming that the act of July 27, 1866, did not authorize the latter company to construct a road from the crossing of the Colorado river to San Francisco.

Mr. Secretary Delano referred the question at issue to the Hon. Walter H. Smith, assistant attorney general, for his opinion, which was submitted March 16, 1874.

In this opinion, wher the question was elaborately discussed, it was held nat the company had the right to go to San Francisco, and to receive such public lands along its route as may be found thereon of the character described in the third section of the act of July 27, 1866. It was also held that the withdrawal of lands was just and right.

Under date of April 16, 1874, my predecessor, Mr. Delano, decided the question in accordance with the views expressed in said opinion.

I am now asked to reverse that decision, and to declare that no grant was made by Congress, and to restore to market lands withdrawn by order of my predecessor.

In my letter of this date, in the matter of the grant of lands to the Southern Pacific Railroad Company, I gave my reasons why I could not, consistently, reverse a decision of my predecessor, made after full consideration, in the absence of any new facts, or a different state of the law. The same principles apply to the proposition under consideration.

I do not consider it necessary, at this time, to discuss the question upon its merits, the action of my predecessor must be recognized as the rule of the department.

I cannot, however, yield assent to the proposition of the applicant, that it is my duty to restore these lands, even were I not restrained by the action of my predecessor.

Congress, in the exercise of its power, has made, in the judgement of the department, a grant of lands to a corporation, for a specific purpose. The action of the department has been merely to take the preliminary steps necessary to execute the law, and to protect all parties in the adjustment of the grant. Should Congress desire different action to be taken by the executive branch of the government, it is reasonable to presume it would indicate the same. No portion of the road has been constructed in California, and the time for the completion of the same expires within a few months, viz: July 4, 1878.

Therefore, in the absence of legislation, I must decline to take any action in the premises.

The papers are herewith returned.

Very respectfully,

C. SCHURZ,

Secretary.

To the commissioner of the general land office.

[Endorsed]: Letter M. 95405. From interior department. Secretary. Dated Oct. 18, 1887. Returns papers and declines to take action in the matter of the application of Jas. F. Stuart, for a restoration of lands in Southern California, withdrawn for Atlantic & Pacific Railroad Company, et cetera. See letters of May 10, 1880, to J. F. Stuart, Jno. Fortney and C. C. Rogers. Benton. Referred to Div. F. Received (G. L. O.) Oct. 20, 1887. 6-250. File with Atlantic & Pacific Railroad papers. 842. Department of the interior. Received Jan. 23, 1894.

Exhibit 57. United States Circuit Court, Southern District California. United States vs. Southern Pacific Railroad Company et al. 184. Master's and examiner's Exhibit No. 57. E. H. Lamme, master and examiner in chancery. For complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 46. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 50.

Letter.

"F" (4-207.) W. J. M.

M. N.

Department of the Interior.

General Land Office.

Washington, D. C., January 22, 1894.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter dated November 11, 1869, from the secretary of the interior to the commissioner of the general land office is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of the general land office.

[Seal]

6731 b—2 m

Mrs. P. & M. N.

Pac. R. Rds.

Department of the Interior.

Washington, D. C., Nov. 11, 1869.

Sir:

I have received your letter of the fifth instant, returning, at my request, my decision of the second instant, in the case of the Southern Pacific Railroad Company, and the accompanying map filed by the president of the At-

lantic & Pacific Railroad Company, upon which he asks that the lands along the route shown upon the map (being the same as that of the Southern Pacific Railroad) may be reserved for his company.

The Southern Pacific Railroad Company was organized by the adoption of articles of association, November 29, 1865, under the general law of the State of California, "approved May 20, 1861, and the several acts supplementary to and" amendatory thereof, for the "purpose of constructing, owning and maintaining a railroad from some point on the bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obisbo, Tulare, Los Angeles and San Diego, to the town of San Diego in said State; thence eastward through the said county of San Diego to the eastern line of the State of California; thence to connect with the contemplated railroad from said eastern line of the State of California to the Mississippi river."

The eighteenth section of said State act of 1861, provides that "nothing in this act shall be construed —— as to confer any powers on such companies to so change their road as to avoid any point named in their articles of association, except as provided in section seventeen, subdivision seven, of this act." Subdivision seven provides, that the company "may change the line of its road, in whole or in part, whenever a majority of the directors shall so determine, as provided hereafter, but no such change shall vary the route of such road, as contemplated in the articles of association of such company."

This act prohibits the company organized under its provisions from making any material change in the line of their road. Consequently, the route upon which the withdrawal of 1867 was secured, not passing through several of the counties named in the articles of association, nor within one hundred and fifty miles of the town of San Diego, was in violation of the State law.

I am clearly of opinion that when there is a grant by Congress of land to a railway company organized under a State law, for the purpose of constructing a road, the lands can only be withdrawn upon the authorized route of such road. Congress did not assume to confer upon an existing company in California the right to construct a road not authorized by its articles of association, or to diverge from the route which they prescribe.

It would be a singular anomaly if Congress should empower a State corporation to do an act expressly forbidden by a law creating it, which the State had the constitutional power to enact. The withdrawal was, I am satisfied, not warranted by the act of July 27, 1866.

If it be conceded that the act gives them adequate authority to construct a branch by the most direct and practicable route from their own road to the point where the Atlantic & Pacific Road crosses the Colorado, still, any question in relation to it is essentially different from that presented for my consideration.

I now return my decision of the second instant, and you will instruct the local land officers to restore the lands withdrawn in 1867 to their former status after sixty days' public notice by advertisement.

I cannot recognize the claim of the Atlantic & Pacific Railroad Company to a reservation of lands upon the route in question. The act already cited, upon which they rely, does not, as I construe it, make them a grant of lands from the point at which the road shall strike the Colorado river, to San Francisco. As this is the only question before me, I forbear to express an opinion upon their right to construct a railroad in California, or upon their existing status under the eighth and other sections of the act. I return the map.

Very respectfully,

Your obedient servant,

J. D. COX,

Secretary.

Hon. Jos. S. Wilson, commissioner of the general land office.

[Endorsed]: No. 32. Secretary of the interior. Nov. 11, 1869. 481243. Refers to his decision of second instant, and directs restoration of lands withdrawn for Southern Pacific Railroad in California; also rejects application of Atlantic & Pacific Railroad for withdrawal of said lands on account of said road. See to him Nov. 13, 1869. M. Withdrawal ordered Nov. 12, 1869. M. *F.* Nov. 12, 1869. 842. De—— Inter—— ——R. R. ——eived Jan. 23, 1894.

Exhibit 59. United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et al. 184. Master's and examiner's Exhibit No. 59. E. H. Lamme, master and examiner in chancery. For complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 50. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 51.

MAP.

Certificate.

M. N. W. J. M.

F. (4-207 a.)

Department of the Interior.

General Land Office.

Washington, D. C., Dec. 26, 1893.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed letter transmitting a diagram to the register and receiver, at Los Angeles, and ordering a withdrawal of lands in accordance therewith, is a true copy of the original, of record in this office, while the annexed diagram is a true and literal exemplification of the original of the one referred to in said letter, as it appears on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of general land office.

[Seal]

Letter.

Received at local office, Dec. 10, 1874.

M. 89049.

Department of the Interior.

General Land Office.

Washington, D. C. November 23, 1874.

Register and receiver, Los Angeles, Cal.

Gentlemen:

I transmit herewith two diagrams, which show the completed limits of the grant, to the Atlantic & Pacific Railroad Company in your district, prepared from the maps of definite location of the road filed in the department August 15, 1872, and, although only recently accepted, the rights of the company must attach to the lands from that date.

You will, accordingly, withhold from sale or entry, all the odd-numbered sections within the thirty-mile limits shown on the diagrams, and hold the even sections within the twenty-mile limits at $2.50 per acre.

The even sections between the twenty and thirty-mile limits are not affected by the grant.

Be pleased to promptly acknowledge the receipt of this letter and diagrams.

Very respectfully,

S. S. BURDETTE,

Commissioner.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et als. 184. Master's and ex-

aminer's Exhibit No. 49. E. H. Lamme, master and examiner in chancery. For complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 51. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Plaintiff's Exhibit No. 52.

LETTER—August 2, 1878.

"F" (4-207.) W. J. M.

F. I. W.

Department of the Interior.

General Land Office.

Washington, D. C., March 22, 1895.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter from the honorable secretary of the interior, dated August 2, 1878, and of the copy of the opinion of the honorable attorney general dated July 16, 1878, therein referred to, is a true and literal exemplification of the original letter and enclosure on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
Commissioner of general land office.

[Seal]

2703 b—2 m

Letter.

E. M. M. B. C. T.
Copy V. W. H.
M. B. H.

Land.

Department of the Interior.

Washington, August 2, 1878.

Sir:

I have considered the case of Samuel Tome et al. in-

volving the right to enter lands in the Visalia land district, California.

The lands for which applications are made are within the limits of the grant to the Southern Pacific Railroad Company made by the act approved July 27, 1866, and are embraced within the limits of the withdrawal of March 22, 1867, which withdrawal was based upon the maps of the line of road filed by the company in this department January 3, 1867.

The homestead applications were made October 4 and 17, 1876, and the pre-emption filings were tendered October 11, 1876, alleging settlement July 18, 1876, except in the case of Samuel Doyle who alleges settlement October 1, 1871.

The local officers rejected all the applications for the reason that the lands were embraced within the limits of the withdrawal for the company.

You approved this action, which was in accordance with the decision of my predecessor, Mr. Secretary Delano, dated April 23, 1875, in the case of Alfred Queen, wherein it was held that the grant became effective at the date of filing the map of the line of road viz: January 3, 1867.

In view of the conflicting decisions of this department, relative to the question of the grant to said company, I submitted a statement of the facts to the attorney general in connection with certain questions. In his reply, a copy of which I herewith transmit, it will be observed, that he is of the opinion, that, although a grant of lands was made to the company by the act of July 27, 1866, the lands

upon which it would operate were not identified until the date of the passage of the joint resolution of June 28, 1870, authorizing the company to construct its road upon the line designated on the map filed in this department January 3, 1867, and that the rights of all parties who were actual settlers at that date were saved. I concur in this opinion.

In the future adjudication of cases it becomes necessary to ascertain what effect is to be given to the joint resolution above mentioned, which reads as follows: "That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the department of the interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the company to the secretary of the interior he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners to the secretary of the interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said secretary of the interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said

act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act." (16 Statutes, 382.)

It will be observed that when a section of road has been completed as required by law, it shall be the duty of the secretary of the interior to cause patents to be issued to the company for the sections of land coterminous to said constructed sections of road "expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act."

Among the conditions and restrictions contained in the said third section are the following: "That, there be and hereby is, granted . . . . every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted

or otherwise disposed of, other lands shall be selected by said company in lieu thereof.". . . .

While the joint resolution identifies the land upon which the grant was to operate, I am of the opinion, that the conditions of the grant remain the same as provided in the original act, except that the rights of all actual settlers at the date of its passage, are saved. In other words: the grant is to be adjusted in the same manner as though the filing of the map in this department on January 3, 1867, was an act authorized by law, except that the rights of persons who were actual settlers on the twenty-eighth of June, 1870, are to be protected. In my opinion this is the only consistent interpretation that can be given to the joint resolution.

Thereby settlers upon the public lands obtain their rights, and the company receives the benefit of its grant.

It would be impossible to adjust the grant under the provisions of the joint resolution without reference to the terms of the original act, and in my opinion all the provisions of the original act should be followed, as there is nothing in the terms of the joint resolution to indicate a variation in the conditions of the same, except so far as the protection of the rights of actual settlers is involved.

Cases which may arise in the future should be adjudicated in accordance with these principles, and the applications of parties who were actual settlers prior to June 28, 1870, and who were duly qualified to make entries of public lands under the laws of the United States, should be received and determined upon their merits.

In the case under consideration, settlement is not alleged by the respective claimants until after the date of

the passage of the joint resolution, June 28, 1870, hence the applications must be rejected.

Should it appear, however, that any of the parties who apply to make homestead entries, were actual settlers at the date above mentioned, or that the land was covered by a valid claim at the date of filing the map, any subsequent application alleging such settlement or reservation, should be determined upon its merits. In this connection, I will state, that, as no right under the homestead law can be initiated prior to date of entry and as no homestead entry could be made by reason of the withdrawal, technically no one could obtain any right under the homestead law to lands within the limits of said withdrawal. In view of the proviso, however, to the joint resolution, saving the rights of all actual settlers, I am of the opinion that said settlers should be allowed to enter the lands under the homestead law, the entries, however, must date from the ——— of application, and the claimants must comply with the provisions of the law from said date.

The papers transmitted with your letter of October 4, 1877, are herewith returned.

Very respectfully,

C. SCHURZ,

Secretary.

Commissioner of the General Land Office.

[Endorsed]: N58,697. Interior department. Secretary. August 2, 1878. Returns papers in case of Sam'l Tome et al. involving right to enter lands in Visalia District, California, and is of the opinion that settlers should

be allowed to enter, et cetera. Copy to R. & R. August 16, 1878. H. A. M. 2—1858 F. 7—279. August 5, 1878

Opinion of the Attorney-General.

Exd. (Copy.)
M. B. H.
S. A. B.

Department of Justice.

Washington, July 16, 1878

Honorable Carl Schurz,
Secretary of the Interior.

Sir:

It appears that by an act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast" (14 Stat. 292) certain persons therein named, and their successors were "created and erected into a body corporate and politic, in deed and in law, by the name, style and title of the "Atlantic & Pacific Railroad Company." Said act further provided: "And said corporation is hereby authorized and empowered to lay out, locate and construct, furnish, maintain and enjoy, a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route as shall be determined by said company to a point on the Canadian river, thence to the town of Albuquerque, on the River Del Norte, and thence, by way of the Agua Frio, or other suitable pass,

to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado river, at such point as may be selected by said company for crossing; thence, by the most practicable and eligible route to the Pacific."

By the third section of said act there was granted to said company "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption, or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office."

The eighteenth section of said act reads as follows:

"*And be it further enacted*, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic & Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall

have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic & Pacific Railroad, herein provided for."

The Southern Pacific Railroad was a railroad incorporated by a general law of the State of California. By that law it was enacted that "Any number of persons, not less than ten, either in this State, or through any portion of the Territories of the United States contiguous to this State, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning and maintaining such railroad, by complying with the following requirements." Among other provisions in the details of the law, are the following, which become important in considering the questions submitted by you: "Section 2. The said articles of association shall set forth" . . . . "the place from and to which the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length, as near as may be."

Section 7 of said act, after conferring the power to select the most advantageous route for the railroad by subdivision second, confers also the power "to receive, hold, take, and convey, by deed or otherwise, the same as a natural person might or could do, such voluntary grants and donations of real estate and other property of every description as shall be made to it, to aid and encourage the construction, maintenance, and accommodation of such railroad.

By subdivision six authority is given "to cross, intersect, join, and unite its railroad with any other railroad, either before or after constructed, at any point upon its route, and upon the grounds of such other railroad company."

By subdivision seven, such company "may change the line of its road, in whole or in part, whenever a majority of the directors shall so determine, as is provided hereinafter; but no such change shall vary the general route of such road, as contemplated in the articles of association of such company."

The eighteenth section prescribes the mode in which such changes may be made, requires the filing of a map, and closes with this provision: "But nothing in this act shall be so construed as to confer any powers on such companies to so change their road as to avoid any point named in their articles of association, except as provided in section seventeen, subdivision seven of this act."

Section 43 requires each company "within a reasonable time after their road shall be finally located" to "cause to be made a map and profile thereof, and of the land taken and obtained for the use thereof, and the boundaries of the several counties through which said road may run, and file the same in the office of the secretary of state."

On the twenty-fifth of November, 1865, articles of association were entered into by T. G. Phelps and others, under the provisions of the foregoing law, forming a corporation to build a contemplated railroad, the terminal points of which are thus stated: "From some point on the bay of San Francisco, in the State of California, through the counties of Santa Clara, Monterey, San Luis

Obispo, Tulare, Los Angeles, and San Diego, to the eastern line of said State of California, there to connect with a contemplated railroad from said eastern line of the State of California, to the Mississippi river."

Apparently all necessary steps were taken to give the Southern Pacific Railroad a corporate existence, and to entitle it to all the rights and franchises granted to it by the State of California and by the United States.

On January 3, 1867, the Southern Pacific Railroad Company filed a map with the commissioner of the general land office, showing the line of route adopted by said company for the construction of its road, which map locates the line of the road under the act of Congress through the counties of San Bernardino and Kern, two counties not named in the articles of association, and does not pass through the counties of San Diego, Los Angeles, and San Luis Obispo, nor touch the town of San Diego upon the Pacific Coast, counties and a town which are named as upon the route fixed in the articles of association. To extend the road to San Francisco, would also require it to pass through the county of San Mateo, not named in the articles of association.

On March nineteenth following the filing of said map, Mr. Secretary Browning directed the commissioner of the general land office to cause the necessary instructions to be issued to the local officers to withhold from sale or disposal the odd sections within the granted limits of twenty miles on each side of said road as shown on the map before mentioned, and also the odd sections outside of the twenty miles and within thirty miles on each side of said

road from which indemnity for land disposed of by the government within the granted limits should be taken.

On July 14, 1868, said order of withdrawal was revoked, and the lands included therein were restored to market.

On August twentieth following, the latter order was suspended, so far as it related to lands south of San Jose.

On November 2 and 11, 1869, Mr. Secretary Cox issued instructions revoking the suspension made by Mr. Secretary Browning on August 20, 1868, aforesaid, and ordered the lands mentioned therein to be restored to market after sixty days' notice.

On December fifteenth following the order of restoration of the second and eleventh of the preceding month were suspended.

On July 25, 1868, the time for the construction of said road was extended by Congress. (15 Stat., 187.)

On June 28, 1870, a joint resolution of Congress was approved (16 Stat. 382), authorizing the Southern Pacific Railroad Company to construct its road on the route indicated by the map filed as aforesaid, January 3, 1867, and providing that upon proof being filed in the department of the interior of the construction of said road, in sections as therein mentioned, "it shall be the duty of the secretary of the interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act."

On July 26, 1870, Mr. Secretary Cox issued instructions that the reservation ordered on March 19, 1867, should be respected.

Two hundred and thirty miles of said road have been constructed and examined by commissioners appointed by the President, and their reports accepted.

On April 23, 1875, it was decided by Mr. Secretary Delano, then secretary of the interior, that the act of July 26, 1866, made a grant of lands to said company, to be afterwards located, and that the filing of the map of its route on January 3, 1867, gave it precision, so that it attached to particular tracts of land.

Notwithstanding said decision the matter has continued under discussion; and your letter proposes to me these three inquiries:

"First. Did the act of July 27, 1866, make a grant of lands to the Southern Pacific Railroad Company?

"Second. If so, was said company authorized to locate its road on the line designated on the map filed in this department January 3, 1867?

"Third. If not, what effect should be given to the joint resolution of Congress of June 28, 1870?"

In reply to the first inquiry I would say that in my opinion the act of July 27, 1866, did make a grant of lands to the Southern Pacific Railroad.

A grant of specific lands to a contemplated railroad would necessarily be a very unsatisfactory one, owing to the uncertainty as to the route which the road would take. This grant to the Southern Pacific Railroad was a grant of lands which were to depend for their situation upon the line of the road, and it would acquire precision

only after a map had been filed and other proper steps taken, which steps, however, must have been taken within the limits of the grant as made. A grant to a railroad company of lands to be located upon a particular line or in a particular direction, cannot be construed as a grant which may be located upon a distinct line or in a different direction. It is in this respect not dissimilar to the Mexican grants which are known as "floats," where a right exists to lay out three leagues within certain exterior limits. This right, although it requires in order to give it precision, that it shall be placed upon three particular leagues, yet cannot be extended to any lands outside of the exterior limits.

It is therefore important to inquire in the present case, not only whether a grant of lands was made to the Southern Pacific Railroad, but whether the map filed by said road was upon a route which it had then a right to build and locate according to the laws of the State of California, under which it had its existence. Upon examining the map filed, and observing the fact that the law of California required that the contemplated railroad should pass through all the counties and towns named, and that it gave no authority to pass through counties not named in the articles of association, it must be held that the line adopted by the Southern Pacific Railroad Company, according to the map, was a line which at the time it had no authority to adopt. To hold, therefore, that it was entitled to lands along this route would be to hold that Congress, by a grant to a railroad which had a legal existence only in one place and along one line, thereby

granted lands to the same road when it transferred itself to another line upon which it had no lawful existence. It is not important that at a subsequent date, towit, on April 4, 1870, an act of the Legislature of California ratified the proceedings by which this railroad company undertook to transfer itself from one route to another. That act could have no effect upon transactions long previous, at least not where any other rights had intervened.

The act of July 27, 1866, which was the basis of all subsequent acts, did not create in the Southern Pacific Railroad Company a new corporation under national authority, nor assume to confer upon it additional or antagonistic powers to those conferred by the State of California.

In reply, then, to your first two inquiries, I would say that the act of July 27, 1866, did make a grant of lands to the Southern Pacific Railroad Company, but gave it no authority to locate its road upon the line designated upon the map filed in the department January 3, 1867.

The next subject to be considered is as to the effect to be given to the resolution of Congress of June 28, 1870.

This resolution recognizes the act of July 27, 1866, as an act making a grant of lands to the Southern Pacific Railroad Company, and authorizes it to construct its road upon the route indicated by the map filed by the company January 3, 1867, and also directs that, upon proper reports, "it shall be the duty of the secretary of the interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported as aforesaid, to the extent and amount granted

to said company by the said act of July twenty-seven, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act." It therefore, enables the company, in placing their grant upon the land, to place it upon the line as indicated by the map; and as before this resolution they had no authority to locate upon this line, its effect would be virtually, although not technically or strictly, to constitute a grant along the line of the map.

In this connection it is proper to consider what effect is to be given, so far as persons claiming rights in the lands in question are concerned, to the various withdrawals which were made of them by the several secretaries of the interior, from the time when the map was filed, January 3, 1867, up to the passage of the resolution of June 28, 1870. These lands were withdrawn from the market substantially all the time. It is contended by the counsel for settlers that when thus withdrawn from the market by the secretaries of the interior, they were wrongfully withdrawn, by reason of an error in law upon their part. That being thus wrongfully withdrawn, it was in the power of all citizens of the United States to acquire the same rights in them which they might acquire in other public lands of the United States, and that these acts of the secretaries are to be treated as therefore entirely ineffective and nugatory.

Even if it be conceded that the acts of the secretaries in this respect were erroneous, in law, the consequence does not follow which is contended for on behalf of the

adverse claimants to the land. They were in fact withdrawn by competent authority, and were thus placed in a state of reservation.

It must often happen, from the nature of the transactions connected with the public lands and the legislation affecting them, that the secretary of the interior is uncertain whether or not lands should be withdrawn, or whether a greater or less amount should be withdrawn, in order to protect grants or comply with other legislation of the United States, and it is often found that such withdrawals in the end have been unnecessary. But he has the authority to put them into a state of reservation so that all questions in reference to them may be properly considered, and when thus reserved it is not in the power of a party to acquire rights by treating such reservation as of no effect.

Wallcot vs. Des Moines Co., 5 Wall., 681.

Riley vs. Welles, No. 377, December term, 1869.

Williams vs. Baker, 17 Wall., 144.

Crilley vs. Burrows, 17 Wall., 167.

It is to be observed that the resolution of June 28, 1870, which is the authority by which the Southern Pacific Railroad locates its line along the route on the map, saves and reserves all rights of actual settlers, in addition to those contained in the act of July 27, 1866, which reserves the rights of all homestead and preemption claimants. It is therefore to be determined what is meant by this saving clause in the joint resolution.

It is a saving clause separate and distinct from the other reservations made in the third section of the act of

July 27, 1866. It is to be inferred, therefore, that there was an object and a reason for this additional reservation. Congress must necessarily have been aware that during the differences of opinion and conflict of orders which had been given in regard to these lands much injury might be done to actual settlers upon them, and it is to be inferred that this clause was intended to protect those who had actually made settlements, and thus necessarily made improvements upon the land. The word "settler" might mean only a legal occupant of the public lands under the public land laws, but the use of the word "actual" by Congress indicates that the class for whom it was legislating in this saving clause is something different, and consists of those persons who had actually gone upon the land in the capacity of settlers. While those who actually settled could not gain legal rights as long as the lands were in reservation, and could not gain the inchoate rights of the preemptors or homesteaders, they had a strong claim upon the consideration of Congress when it finally determined to permit this railroad to locate its grant upon another line than that which it had originally intended. The words "actual settlers" must therefore receive an interpretation, and cannot be regarded as a mere meaningless phrase; and when found in this joint resolution it was intended by this saving clause that actual settlers in addition to those who were rightfully preemptors and homesteaders, should have their equitable rights respected, and should be allowed, upon making proper proof of their actual settlement, to obtain title to their lands under the general public laws of the United States.

The effect then to be given to the joint resolution of June 28, 1870, is that it permits the location by the Southern Pacific Railroad of its road according to the line of the map, but that the rights of actual settlers then upon the lands are to be saved, in addition to those provided for by the act of July 27, 1866.

Certain questions have been raised on behalf of settlers upon these lands as to whether the acceptances by the President of the various sections of the road as constructed were in legal form so that patents therefor could have properly been granted. I have not deemed it necessary to examine the question of whether such acceptance was in legal form, as I cannot perceive that it in any way affects the rights of any settler upon the land. Such an inquiry raises a question only between the railroad and the United States.

Very respectfully,

Your obedient servant,

(Signed.) CHAS. DEVENS,

Attorney-General.

[Endorsed]: Attorney-General, sixteenth July, 1878. Renders an opinion as to lands granted to Southern Pacific Railroad Company of California.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al., No. 600. Plaintiff's Exhibit No. 52. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 53.

DECISION.

"F" 4-207 W. J. M.

F. I. W.

Department of the Interior,
General Land Office.
Washington, D. C., March 22, 1895.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of departmental letter dated October 5, 1893, in the case of Mattie Moore v. Norman A. M. Kellogg, is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
Commissioner of the General Land Office.

[Seal]

11705 b—2m

Exd. M. B. H.

A. C. L.

Refer in reply to this initial:

Vol. 18-59.

Address only the commissioner of the general land office.

Department of the Interior,
Washington, D. C., October 5, 1893.

MATTIE MOORE

vs. } Homestead.

NORMAN A. M. KELLOGG.

The Commissioner of the General Land Office:

Sir:

The record shows that Mattie Moore made homestead entry December 31, 1890, for the east one-half of the northwest one-quarter and lot 1, (southwest one-quarter of the northwest one-quarter) and lots 2 and 3 of section 29, township 4 north, range 19 west, S. B. M., Los Angeles land district, California.

On December 20, 1890, Norman A. M. Kellogg filed an application to purchase lot 1, the east one-half of the northwest one-quarter, northwest one-quarter of the northeast one-quarter of section 29, township 4 north, range 19 west, S. B. M., of the district aforesaid.

The land in controversy is within the twenty-mile limits of the grant to the Atlantic & Pacific Railroad Company, and included in the indemnity limits of the Southern Pacific Company.

Kellogg made application for a hearing before the register and receiver to determine the conflicting claims of himself and Moore, and, on June 9, 1891, the local officers rendered their joint opinion holding for cancellation the homestead entry of Moore, and allowing Kellogg to purchase, under the act of Congress of January 13, 1881. (21 Stat. 315.)

On July 1, 1891, Moore appealed, and on May 16, 1892, your office decision was rendered affirming the finding below. July 18, 1892, Moore appealed to the department.

It is claimed that Kellogg had a right to purchase the land in controversy under the act of Congress, supra.

The act referred to is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all persons who shall have settled and made valuable and permanent improvements upon any odd numbered section of land within any railroad withdrawal in good faith and with the permission or license of the railroad company for whose benefit the same shall have been made, and with the expectation of purchasing of such company the land so settled upon, which land so settled upon and improved, may, for any cause, be restored to the public domain, and who, at the time of such restoration, may not be entitled to enter and acquire title to such land under the pre-emption, homestead, or timber culture acts of the United States, shall be permitted, at any time within three months after such restoration, and under such rules and regulations as the commissioner of the general land office may prescribe, to purchase not to exceed one hundred and sixty acres in extent of the same by legal sub-divisions, at the price of two dollars and fifty cents per acre, and to receive patents therefor."

But this land was within the primary limits of the grant to the Atlantic & Pacific Railroad Company under the act of July 27, 1866 (14 Stat., 292), as shown by its map of definite route, filed March 12, 1872, and for this

reason was not subject to selection as indemnity land for the Southern Pacific Railroad Company, under its grant made by act of Congress of March 3, 1871 (16 Stat., 579).

In the case of the United States v. Southern Pacific Railroad Company (146 U. S. Reports, 570), the Supreme Court, speaking through Justice Brewer, says:

"Our conclusions, therefore, are, that a valid and sufficient map of definite location of its route from the Colorado River to the Pacific Ocean was filed by the Atlantic & Pacific Company, and approved by the secretary of the interior; that by such act the title to these lands passed, under the grant of 1866, to the Atlantic & Pacific Company and remained held by it subject to a condition subsequent until the act of forfeiture of 1886; that by that act of forfeiture the title of the Atlantic & Pacific was retaken by the general government, and retaken for its own benefit, and not that of the Southern Pacific Company, and that the latter company has no title of any kind to these lands."

It will thus be seen that the act forfeiting these lands of the Atlantic & Pacific Railroad Company did not give the Southern Pacific Company any rights to the land within its indemnity limits, but the land reverted to the Federal Government, and after the said act was passed became open to settlement, and as the record shows that Mattie Moore made her application to file upon said land now in issue, together with other land, on August 10, 1888, at which time the land was opened to settlement, it follows that she has the prior right to it.

As the Southern Pacific Railroad Company had no le-

gal rights in the land, Kellogg could acquire none by reason of his application to purchase from it.

The act of January 13, 1881, applies only to settlers upon lands of the railroad for whose benefit the land is withdrawn. In other words, if the land was not withdrawn for the Southern Pacific R. R. Co., it is evident that the settler could acquire no rights by reason of his application to purchase. Kellogg settled upon this land in August, 1887, but he acquired and could acquire no rights under his settlement, as he had exhausted his homestead, pre-emption and timber culture rights, and as regards the land in question, he was in the position of a mere squatter without legal rights or standing.

It thus follows that your office decision was in error and the same is hereby reversed. The entry of Moore will be allowed to remain intact and the application to purchase by Kellogg will be dismissed.

The papers transmitted by your office letter of November 10, 1892, are herewith returned.

Very respectfully,

WM. H. SIMS,
First Assistant Secretary.

[Endorsed]: U. S. Circuit Court, Ninth Circuit, Southern District of California. U. S. vs. S. P. R. R. Co. et al. No. 600. Plaintiff's Exhibit No. 53. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 54.

LETTER.

"F" (4—207.) W. J. M.

M. N.

Department of the Interior,
General Land Office,
Washington, D. C., January 22, 1894.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of departmental decision, dated November 2, 1869, in the matter of the revocation of the order withdrawing lands for the Southern Pacific Railroad, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
Commissioner of the General Land Office.

[Seal]

6731 b—2m.

Mrs. P. & M. N.

Pac. Railroads.

Department of the Interior,
Washington, D. C., Nov. 2, 1869.

Sir:

I have received your letter of the 9th April last, recommending the restoration of certain lands which had been withdrawn on account of the Central Pacific Railroad of California, and the Southern Pacific Railroad.

Since the receipt of your letter, arguments and exhibits have been filed to show that the line upon which the withdrawal for the Southern Pacific Railroad was based, was not the line upon which Congress had made a grant of lands to aid in the construction of that road.

The Southern Pacific Railroad also filed arguments to sustain their right to a grant upon the line of withdrawal, with affidavits to show that the line upon which they have obtained the withdrawal was the only practicable route to make a connection with the Atlantic & Pacific Railroad.

On the 14th July, 1868, my immediate predecessor made a decision upon this subject, revoking his order for a withdrawal of lands for the Southern Pacific Railroad, and directing you to "immediately issue instructions to the proper local officers in California restoring the lands to the status they held at the date of the withdrawals before mentioned." On the 20th August following, he suspended so much of his order as related to lands south of San Jose, in order to afford the company an opportunity to present evidence of the legality of their action under their charter in the location of their road.

I have carefully considered the papers filed by the company, and I can come to no other conclusion than that, in the location of their road, they entirely disregarded their charter from the State of California, which, in the act of Congress, is given as their authority to build a road in said State.

The withdrawal not being upon the route the company were authorized to construct a railroad, the suspension

of Mr. Secretary Browning's order of August 20, 1868, is hereby revoked, and you will issue the necessary order for a restoration of the lands as directed by him on the 14th July, 1868.

I transmit herewith the papers in the case.

Very respectfully,

Your ob't servant,

J. D. COX,

Secretary

Hon. Jos. S. Wilson,

Com'r of the Gen'l Land Office.

[Endorsed]: No. 31. H. 80. 150. Hon. Sec. Interior. Nov. 2-69. In reply to our letter of 9th April, recommending the restoration of certain lands withdrawn for the C. P. R. R. & S. P. R. R. Co. revokes the suspension of Sec. Browning's order and restores the lands, etc. Instructions issued Nov. 12-69. Copy furnished H. Beard, Esq., Nov. 4, 1869. M. F.— 146. Nov. 3, '69.

842. Dep.—— of Inter——— L. & R. R. Receiv— Jan. 23, 1894.

U. S. Circuit Court, Ninth Circuit, Southern Dist. of Cal., U. S. vs. S. P. R. R. Co. et al. No. 600. Plaintiff's Exhibit No. 54. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 55.

Map of the Atlantic & Pacific Railroad Company showing limits in the Los Angeles land district.

Exhibits Filed before Special Examiner Leo Longley, Esq., on Defendant's Behalf.

Defendant's Exhibit No. 256.

THREE LETTERS.

Certificate.

F. (4-207 a.) W. J. M.

S. S. M.

Department of the Interior.

General Land Office,

Washington, D. C., Aug. 8, 1895.

I, E. F. Best, acting commissioner of the general land office, do hereby certify that the annexed copies are true and literal exemplifications of the originals on file or of record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

E. F. BEST,

Acting Commissioner of General Land Office.

[Seal]

[Endorsed]: U. S. vs. S. P. Co. No. 600. Defendant's Exhibit No. 256. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 311.

LETTER.

Department of the Interior,

General Land Office,

April 21, 1871.

Register and Receiver,

Visalia, California.

Gentlemen:

By act of March 3, 1871, sec. 23, the Southern Pacific Railroad Co. is authorized to construct a railroad from a point at or near Tehachapa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, with the same grant of lands, etc., as were granted to said company by act of 27th July, 1866.

The company having filed a diagram designated the general route of said road, I herewith transmit a map showing thereon that part of the line falling in your district, together with the twenty and thirty mile limits of the grant to the line of withdrawal by corresponding limits for the Southern Pacific road under the act of 1866, and you are hereby directed to withhold from sale or location, pre-emption or homestead entry all the odd numbered sections falling within those limits.

The even numbered sections within the limit of twenty miles you will increase in price to $2.50 per acre, and will dispose of them at that price, but only under the pre-emption and homestead laws.

When pre-emption or homestead entries may have had legal inception prior to the receipt of this order the set-

tlers may of course prove their claims, either upon odd or even numbered sections, at the rate of $1.25 per acre.

The even numbered sections between the twenty and thirty mile or indemnity limits are not affected by this communication.

This order will take effect from the date of its receipt by you, and you will please acknowledge receipt by date.

Very respectfully,

WILLIS DRUMMOND,

Commissioner.

[Endorsed]: U. S. vs. S. P. Co. No. 587. Defendant's Exhibit No. 29. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. vs. S. P. Co. No. 600. Defendant's Exhibit No. 311. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 312.

LETTER.

Department of the Interior,
General Land Office.

April 21, 1871.

Register and Receiver,
Los Angeles, California.

Gentlemen:

By act of March 3, 1871, sec. 23, the Southern Pacific Railroad Co. is authorized to construct a railroad from a point at or near Tehachapa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado

River, with the same grant of lands, etc., as were granted to said company by act of July 27, 1866.

The company having filed a diagram designating the general route of said road, I herewith transmit a map showing thereon the line of route, as also the 20 and 30 mile limits of the grant to the line of withdrawal for the Southern Pacific road under the act of 1866, and you are hereby directed to withhold from sale or location, pre-emption or homestead entry all the odd numbered sections falling within those limits.

The even numbered sections within the limit of 20 miles you will increase in price to $2.50 per acre, and will dispose of them at that price, but only under the pre-emption and homestead laws.

When pre-emption or homestead entries may have had legal inception prior to the receipt of this order, the settlers may of course prove their claims, either upon odd or even numbered sections, at the rate of $1.25 per acre.

This order will take effect from the date of its receipt by you and you will please acknowledge receipt by date.

The even numbered sections between the 20 and 30 mile or indemnity limits are not affected by this order.

Very respectfully,

WILLIS DRUMMOND,

Commissioner.

[Endorsed]: U. S. vs. S. P. Co. No. 587. Defendant's Exhibit No. 30. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

U. S. vs. S. P. Co. No. 600. Defendant's Exhibit No. 312. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 256.

First Letter.

Department of the Interior,
General Land Office,

March 22, 1867.

Register and Receiver, San Francisco, Cal.

Gentlemen:

The secretary of the interior has transmitted to this office a map of the designated line of route of the Southern Pacific Railroad of California and directed the withdrawal of the lands granted thereto under the act of 27th July, 1866, pamphlet laws 1866, page 299. The grant to this road is found in the 18th section of the above act; by that section this company is granted every alternate or odd numbered section of public land for 10 sections in width on each side of the line of route, and indemnity for lands sold, reserved or otherwise appropriated within the grant from the alternate odd sections of unappropriated public land not "more than 10 miles beyond the limits of the granted sections." The limits of the grant, then, are 20 miles on each side of the road, and of the indemnity 30 miles on each side.

In compliance with the secretary's instructions, I herewith enclose a diagram map, having noted thereon that part of the line of route within the 20 and 30 mile limits which fall within the limits of your district, and you are hereby directed to withdraw from sale or location, preemption or homestead entry, all the odd sections within said limits, and no entries will be allowed thereon after

the receipt of this order except where bona fide pre-emption claims have attached prior to that time.

The even sections within the 20 mile limits will, by virtue of the act of March 3, 1853, be increased to $2.50 per acre, and subject to the provisions of the pre-emption and homestead laws at that price except where pre-emption rights may have attached prior to this withdrawal; in such cases then parties may prove up and pay for their claims at the price they were held on the date of settlement. The even sections within the 20 miles will not be subject to private entry until duly offered at the increased price.

By the 6th section of the act, the provisions of which are extended to the Southern Pacific road by the 18th section, the unsurveyed lands within 40 miles on each side of the line of route are directed to be surveyed and the odd sections of lands granted by the act "shall not be liable to sale or entry" or pre-emption before or after they are surveyed, "except by said company as provided in this act"; therefore, as plats of surveys within the limits of the grants may be filed in your office you will immediately withdraw the odd sections from pre-emption or entry of any kind and hold the same for the benefit of the road.

This order will take effect from the date of its reception and you will please to acknowledge the date of its receipt by you.

Respectfully,
Your obd't svt.
JOS. S. WILSON,
Commissioner.

[Endorsed]: U. S. vs. S. P. Co. No. 600. Defendant's Exhibit No. 256. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Second Letter.

Department of the Interior,

General Land Office,

March 22, 1867.

Register and Receiver, Visalia, Cal.

Gentlemen:

The secretary of the interior has transmitted to this office a map of the designated line of route of the Southern Pacific Railroad of California and directed the withdrawal of the lands granted thereto under the act of 27th July, 1866 (pamphlet laws 1866, page 299). The grant to this road is found in the 18th section of the above act; by that section this company is granted every alternate or odd numbered section of public land for 10 sections in width on each side of the line of route, and indemnity for lands sold, reserved or otherwise appropriated, within the grant from the alternate odd sections of unappropriated public land not "more than 10 miles beyond the limits of the granted sections." The limits of the grant, then, are 20 miles on each side of the road, and of the indemnity 30 miles on each side.

In compliance with the secretary's instructions, I herewith enclose a diagram map, having noted thereon that part of the line of route within the 20 and 30 mile limits which fall within the limits of your district, and you are hereby directed to withdraw from sale or location, pre-

emption or homestead entry all the odd sections within said limits, and no entries will be allowed thereon after the receipt of this order except where bona fide pre-emption claims have attached prior to that time. The even sections within the 20 mile limits will, by virtue of the act of March 3, 1853, be increased to $2.50 per acre, and subject to the provisions of the pre-emption and homestead laws at that price except where pre-emption rights may have attached prior to this withdrawal; in such cases, then parties may prove up and pay for their claims at the price they were held on the date of settlement. The even sections within the 20 miles will not be subject to private entry until duly offered at the increased price.

By the 6th section of the act, the provisions of which are extended to the South Pacific road by the 18th section, the unsurveyed lands within 40 miles on each side of the line of route are directed to be surveyed and the odd sections of land granted by the act "shall not be liable to sale or entry," or preemption before or after they are surveyed, "except by said company, as provided in this act," therefore as plats of surveys within the limits of the grants may be filed in your office, you will immediately withdraw the odd sections from preemption or entry of any kind and hold the same for the benefit of the road.

This order will take effect from the date of its reception and you will please to acknowledge the date of its receipt by you.

Respectfully,

Your Obdt. Svt.,

JOS. S. WILSON,

Commissioner.

[Endorsed]: United States vs. Southern Pacific Company. No. 600. Defendant's Exhibit No. 256. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

Third Letter.

Department of the Interior.
General Land Office.

March 22, 1867.

Register and Receiver,
Stockton, Cal.

Gentlemen:

The secretary of the interior has transmitted to this office a map of the designated line of route of the Southern Pacific Railroad of California, and directed the withdrawal of the lands granted thereto under the act of 27 July, 1866—pamphlet laws, 1866, page 299. The grant to this road is found in the 18th section of the above act; by that section this company is granted every alternate or odd numbered section of public land, for ten sections in width on each side of the line of route, and indemnity for lands sold, reserved or otherwise appropriated, within the grant from the alternate odd sections of unappropriated public land, not "more than 10 miles beyond the limits of the granted sections." The limits of the grant, then, are 20 miles on each side of the road, and of the indemnity 30 miles on each side.

In compliance with the secretary's instructions, I herewith enclose a diagram map, having noted thereon, that part of the line of route within the 20 and 30 mile limits

which fall within the limits of your district, and you are hereby directed to withdraw from sale or location, preemption or homestead entry, all the odd sections within said limits, and no entries will be allowed thereon after the receipt of this order except where bona fide preemption claims have attached prior to that time. The even sections within the 20 mile limits, will, by virtue of the act of March 3, 1853, be increased to $2.50 per acre, and subject to the provisions of the preemption and homestead laws at that price, except where preemption rights may have attached prior to this withdrawal; in such cases, then, parties may prove up and pay for their claims at the price they were held on the date of settlement. The even sections within the 20 miles will not be subject to private entry until duly offered at the increased price.

By the 6th section of the act, the provisions of which are extended to the South Pacific road by the 18th section, the unsurveyed lands within 40 miles on each side of the line of route are directed to be surveyed and the odd sections of lands granted by the act "shall not be liable to sale or entry," or preemption, before or after they are surveyed, "except by said company, as provided in this act"; therefore as plats of surveys within the limits of the grants may be filed in your office, you will immediately withdraw the odd sections from preemption or entry of any kind, and hold the same for the benefit of the road.

This order will take effect from the date of its reception, and you will please to acknowledge the date of its receipt by you. Respectfully,

Your Obd't Svt.,

JOS. S. WILSON,

Commissioner.

[Endorsed]: United States vs. Southern Pacific Company. No. 600. Defendant's Exhibit No. 256. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

Map.

Map showing land grant made by act of Congress of July 27, 1866, to Southern Pacific Railroad Company.

MAP(S) IS/ARE TOO LARGE TO BE FILMED

EIGHT LETTERS.

Defendant's Exhibit No. 257.

Certificate.

F. W. J. M.

S. S. M.

Department of the Interior.
General Land Office.

Washington, D. C., Aug. 3, 1895.

I, S. W. Lamoreux, commisioner of the general land office, do hereby certify that the annexed copies of letters relative to the withdrawal of lands on account of the grant to the Southern Pacific Railroad Company are true and literal exemplifications of the originals on file or of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed. at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
Commissioner of the general land office.

[Seal of United States General Land Office.]

First Letter.

Department of the Interior.

Washington, D. C., July 14, 1868.

Sir:

I have received your letter of the 18th ultimo, and accompanying papers, having reference to the withdrawal of certain land in California for railroad purposes.

It appears that Franklin Steele, Esq., on the 23d May last, asked that the lands situated between San Francisco and San Jose, in California, be restored to the condition they were in prior to the withdrawals made respectively in 1864 and 1867 for the Central Pacific Railroad Company of California and the Southern Pacific Railroad Company.

Mr. Steele states that the existence of these withdrawals, which he claims were improvidently made, absolutely estop citizens from settling upon or locating the odd sections, and requires payment of double price for the even sections.

Referring to papers previously filed in your office, he asks that the matter be examined. The withdrawal in 1864 was made for the Central Pacific Railroad Company of California. The San Francisco & San Jose Railroad Company, as assignees of that company, claimed the benefit of said withdrawal, under the acts of Congress of July 1, 1862, and July 2, 1864.

After the consideration of the claim of said company it was rejected on the 31st of October last, and you were so advised on the 12th of November following.

Consequently that withdrawal of itself will not stand in the way of a restoration.

The grant to the Southern Pacific Railroad Company is by the 18th section of the act approved July 27, 1866 (14 Stat. 299), which provides that the company incorporated under the laws of the State of California is authorized to connect with the Atlantic & Pacific Railroad Company, formed under the act, at such point as they shall deem

most suitable for a railroad line to San Francisco, et cetera, and to aid in the construction makes similar grants of land, subject to the conditions, limitations, et cetera, imposed upon the Atlantic & Pacific Railroad Company.

The company claim that under the articles of association they have the option of locating the terminus of their road at any point on the bay of San Francisco, and that the act of Congress absolutely makes San Francisco the western terminus, and consequently their right to the land is as perfect between the points mentioned as it is between San Jose and the connecting point with the Atlantic & Pacific Railroad.

The Southern Pacific Railroad Company having been recognized by Congress as a corporation formed under State laws, the question arises what was the location of their road as required by those laws?

From the papers it appears that under the general railroad law of the State, approved May 20, 1861, authority is given to any number of persons, not less than ten, being subscribers, et cetera, to adopt articles of association wherein they are required to state "the place from, and to which, the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length as near as may be," with authority to make a change in the general route, but not so as to avoid any point named in the articles of association.

The articles of association designate the route of the road as "from some point on the bay of San Francisco, in the State of California, through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles

and San Diego, to the town of San Diego, in said State, thence eastward through said county of San Diego to the eastern line of said State of California, there to connect with a contemplated railroad from said eastern line of the State of California to the Mississippi river."

The first county mentioned envelopes the lower portion of the bay of San Francisco.

To reach the city of San Francisco from there, the road would have to be constructed northward through the counties of San Mateo and San Francisco (counties not mentioned in the articles of association) a distance of near fifty miles, and alongside of or upon the railroad already constructed, and upon which the cars were and had been running for nearly two years prior to the adoption of said articles of association.

The State law required the corporations to fix the place from, and to which the proposed road was to be constructed, and the counties through which it was intended to pass. This was done.

The starting point being from some point on the bay of San Francisco, and the first county through which it was intended to pass is Santa Clara. No authority is conferred to construct the road through counties to the north of it, leaving out of view the fact that, at the date of corporation, a railroad company created by and under the same State law, had then a railroad constructed and in operation along the narrow peninsula which extends from San Jose to San Francisco.

Further than this, other portions of the route as designated do not conform to law. The line does not touch

the counties of San Luis Obispo, Los Angeles and San Diego. In fact, the same does not go to within something like one hundred and fifty miles of the town of San Diego, a point at which the road is required to go, and from which it is to start for the eastern line of the State, there to connect with the Atlantic & Pacific Railroad.

The route of the Atlantic & Pacific Railroad, through the Territories of the United States, to the eastern boundary of the State of California, has not been fixed, so far as this department is advised, and until that company fix the route of their road to that point, the Southern Pacific Railroad Company will be unable to meet and connect with it.

This designation of the general route of the Southern Pacific Railroad not conforming to law, my order of the 19th March, 1867, directing you to order a withdrawal of lands for said road is hereby revoked, and you will immediately issue instructions to the proper local officers in California restoring the lands to the status they held at the date of the withdrawals before mentioned.

Upon the Southern Pacific Railroad Company designating the route of their road in conformity with law, and filing a map thereof in this department duly certified, such orders will be issued as may seem to be required to protect the rights of the company. I return the papers.

Very respectfully,

Your Obt. Servant,

O. H. BROWNING,

Secretary.

Hon. Jos. S. Wilson,

Commissioner of the General Land Office.

Second Letter.

Pac. R. R.

Department of the Interior.
Washington, D. C., August 20, 1868.

Sir:

A request having been made by General W. S. Rosecrans, on behalf of the Southern Pacific Railroad Company, that an opportunity may be afforded to present evidence on the question of the legality of the action of the company under their charter in the location of their road, I have consented to suspend for the present so much of my order of the 14th ultimo as directed the restoration of lands situated south of San Jose.

So much of said order as directed a restoration of lands between San Francisco and San Jose will be carried into immediate effect, and you will issue the requisite instructions to the local land officers in California without delay.

Very respectfully,
Your Obdt. Servant,
O. H. BROWNING,
Secretary.

Hon. Jos. S. Wilson,
Commissioner of the General Land Office.

Third Letter.

Pac. Railroads.

Department of the Interior.
Washington, D. C., November 2, 1869.

Sir:

I have received your letter of the 9th April last, recommending the restoration of certain lands which had been

withdrawn on account of Central Pacific Railroad of California and the Southern Pacific Railroad.

Since the receipt of your letter, arguments and exhibits have been filed to show that the line upon which the withdrawal for the Southern Pacific Railroad was based was not the line upon which Congress had made a grant of lands to aid in the construction of that road.

The Southern Pacific Railroad also filed arguments to sustain their right to a grant upon the line of withdrawal, with affidavits to show that the line upon which they had obtained the withdrawal was the only practicable route to make a connection with the Atlantic & Pacific Railroad.

On the 14th July, 1868, my immediate predecessor made a decision upon this subject, revoking his order for a withdrawal of lands for the Southern Pacific Railroad, and directing you to "immediately issue instructions to the proper local officers in California, restoring the lands to the status they held at the date of the withdrawals before mentioned." On the 20th August following he suspended so much of his order as related to lands south of San Jose, in order to afford the company an opportunity to present evidence of the legality of their action under their charter in the location of their road.

I have carefully considered the papers filed by the company, and I can come to no other conclusion than that, in the location of their road, they entirely disregarded their charter from the State of California, which, in the act of Congress, is given as their authority to build a road in said State.

The withdrawal not being upon the route the company were authorized to construct a railroad, the suspension of Mr. Secretary Browning's order of August 20, 1868, is hereby revoked; and you will issue the necessary orders for a restoration of the lands, as directed by him on the 14th July, 1868.

I transmit, herewith, the papers in the case.

Very respectfully,

Your ob't servant,

J. D. COX,

Secretary.

Hon. Jos. S. Wilson,

Comr. of the Genl. Land Office.

Fourth Letter.

Ld. Gr. R. Rds.

Department of the Interior.

Washington, D. C., December 15, 1869.

Sir:

Under date of the 14th instant, the Hon. J. M. Howard, chairman of the Senate committee on the Pacific Railroad, called my attention to a joint resolution pending before that committee, in relation to the lands withdrawn on account of the Southern Pacific Railroad Company.

In accordance with Mr. Howard's suggestion "that the lands should hold their present status without change in any respect until this resolution is finally acted upon by Congress," the restoration of lands under my decisions

of the 2d and 11th ultimo will be suspended until you are further advised by this department.

Very respectfully,

Your ob't servant,

J. D. COX,

Secretary.

Hon. Jos. S. Wilson,

Comr. of the Genl. Land Office.

Fifth Letter.

Ld. G. T. R. R.

Department of the Interior.

Washington, D. C., July 26, 1870.

Sir:

Referring to my letter of the 15th December last, directing you to suspend, until further advised by this department, all action under my decisions of November 2 and 11, 1869, ordering the restoration of lands withdrawn on account of the Southern Pacific Railroad Company of California, I have now to inform you that by a joint resolution of Congress, approved June 28, 1870, the said company are authorized to construct their road and telegraph line, as near as may be, on the route indicated by the map filed in this department 3d January, 1867, and upon constructing their said road and telegraph line on that route, in compliance with the provisions of the act July 27, 1866, be entitled to patents for the granted lands.

You will advise the proper local officers of this legisla-

tion, that the reservation of 1867, on account of the company may be respected.

Very respectfully,
Your obt. servant,
J. D. COX,
Secretary.

Hon. Jos. S. Wilson,
Commissioner of the General Land Office.

Sixth Letter.

Department of the Interior.
General Land Office.
July 29, 1870.

Register and Receiver,
San Francisco, Cal.

Gentlemen:

The secretary of the interior having informed this office that by a joint resolution (copy herewith enclosed) of Congress, approved June 28, 1870, the Southern Pacific Railroad Company of California are authorized to construct their road and telegraph line, as near as may be, on the route indicated by the map filed in this department 3d January, 1867, a copy of which was sent you on 22d March 1867, I have to direct that the reservation, as indicated in that letter, be respected.

Please acknowledge receipt.

Very respectfully,
JOS. S. WILSON,
Commissioner.

Seventh Letter.

Department of the Interior.

July 29, 1870.

Register and Receiver,
Visalia, California.

Gentlemen:

The secretary of the interior having informed this office that, by a joint resolution (copy herewith) of Congress, approved June 28, 1870, the Southern Pacific Railroad Company of California are authorized to construct their road and telegraph line, as near as may be, on the route indicated by the map filed in this department 3d January, 1867, a copy of which was sent you with my letter of 22d March, 1867, I have to direct that the reservation, as indicated in that letter, be respected.

Please acknowledge receipt.

Very respectfully,
JOS. S. WILSON,
Commissioner.

Eighth Letter.

Department of the Interior.
General Land Office.

July 29, 1870.

Register and Receiver,
Stockton, California.

Gentlemen:

The secretary of the Interior having informed this office that, by a joint resolution (copy herewith) of Congress, approved June 28, 1870, the Southern Pacific Rail-

road Company of California are authorized to construct their road and telegraph line, as near as may be, on the route indicated by the map filed in this department 3d January, 1867, a copy of which was sent with letter of 22d March, 1867, I have to direct that the reservation, as indicated in that letter, be respected.

Please acknowledge receipt.

Very respectfully,

JOS. S. WILSON,

Commissioner.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendant's Exhibit No. 257. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 257, in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants. No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal.]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 258.

LETTERS.

Certificate.

A. M.
J. T. S.
C. H. B.

United States of America.
Department of the Interior.

Washington, D. C., July 30, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals as they appear of record in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior.

E. W.

[Seal of the Department of the Interior.]

First Letter.

Department of the Interior.

Washington, D. C., July 22, 1870.

Gentlemen:

The Southern Pacific Railroad Company of California having filed in this department the notice required by the resolution of Congress, approved June 28, 1870, that thirty miles of their road and telegraph line had been completed, commencing at San Jose, and terminating at Gilroy, you have been appointed by the President commissioners to examine and report upon the same. The appointment will take effect from and after its acceptance by you and your subscribing to the oath of office, form of which is herewith.

In case you accept the appointment, you will immediately advise this department, inclosing the oath of office, duly executed. It requires three commissioners to make the examination and sign the report, so that, if either of you should decline, the others will not be authorized to act until they are advised of the appointment of another commissioner to fill the vacancy.

The fifth section of the act of July 27, 1866, provides, that the "railroad shall be constructed in a substantial and workmanlike manner, with all the necessary draws, culverts, bridges, viaducts, crossings, turnouts, stations, and watering places, and all other appurtenances, including furniture and rolling stock, equal in all respects to railroads of the first class when prepared for business, with rails of the best quality, manufactured from American iron. And a uniform gauge shall be established throughout the entire length of the road. And there shall

be constructed a telegraph line, of the most substantial and approved description, to be operated along the entire line."

The act of July 25, 1868, gave the company until the first day of July, 1870, for the construction of the first thirty miles.

The resolution before mentioned provides that said company "may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the department of the interior on the third day of January, 1867."

I transmit herewith a form for your report, which indicates the points you are to examine and report upon. You will also report whether said thirty miles, or any part thereof, has been constructed "on the line of any other railroad route, to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States." With your report you will transmit a map and profile of the section. I also transmit a form of certificate to be made by the chief engineer of the company and attached to said map.

The said act of 1866 fixes your compensation at $10 per day for each and every day actually and necessarily employed, and ten cents per mile for each mile actually and necessarily traveled in discharging the duties required of you, which per diem and mileage shall be in full compensation of your services, and to be paid by the company. Duplicates of the receipts given by you to the company on payment thereof will be transmitted with your report.

Your report will be addressed to the secretary of the interior.

Very respectfully,
Your ob't servant,
J. D. COX,
Secretary.

Messrs. William Sherman, Thomas B. Shannon and Calvin Brown, Commissioners on the Southern Pacific Railroad of California, San Francisco, California.

Second Letter.

Department of the Interior.
Washington, D. C., November 25, 1870.

Gentlemen:

I have received through C. P. Huntington, Esq., vice president of the Southern Pacific Railroad Company of California, your report dated the 29th ultimo, on the first section of the Southern Pacific Railroad, commencing at a point in the city of San Jose and terminating at the end of the 30 26-100 mile, near the town of Gilroy, in the county of Santa Clara, Cal.

The eighteenth section of the act of July 27, 1866, authorizes the Southern Pacific Railroad to connect with the Atlantic & Pacific Railroad, and extends to the former, to aid in its construction and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores, "similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic & Pacific

Railroad." The third and fourth sections of the act provide for the manner of construction, which is to be "equal to railroads of the first class, when prepared for business."

The act of July 25, 1868, gave to the Southern Pacific Railroad Company until the first day of July last in which to construct the first thirty miles. The joint resolution of June 28, 1870, further provides that said company may construct its road and telegraph line on the route indicated by the map filed in this department January 3, 1867; and, upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the company to the secretary of the interior, he shall direct an examination of each section by commissioners to be appointed by the President, as provided in the act making a grant of lands to said company, approved July 27, 1866.

This department, February 24, 1866, adopted a standard defining what should constitute a "first class railroad." The Atlantic & Pacific Railroad Company have constructed fifty miles of their road and telegraph line, and the report of the commissioners thereon showed it to have been constructed in conformity with that standard. That company have used rails weighing fifty-six pounds to the lineal yard, fastened with the fishjoint, and the gauge is four feet eight and a half inches, and the culverts and masonry abutments are of stone.

In your report, you state "that the rails weigh not less than fifty pounds per lineal yard," and the gauge is not stated. The culverts and bridge abutments are of wood,

and there is no statement that the company will substitute stone when it can be had within a reasonable distance of the road.

I enclose herewith printed copies of the standard of construction, to which the Atlantic & Pacific Railroad Company have conformed, and desire a further report from you on the said 30 26-100 miles, made out as far as the facts will warrant, in conformity with said standard.

Very respectfully,
Your ob't servant,
C. DELANO,
Secretary.

William Sherman, Calvin Brown and Thomas B. Shannon, Commissioners on the Southern Pacific Rail-Road, San Francisco, California.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 258. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 258, in the case entitled The United States of America, Complainants, vs. The South-

ern Pacific Railroad Company et al., Defendants. No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal.]

[Endorsed:] Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 259.

REPORT OF RAILROAD COMMISSIONERS, ETC.

Certificate.

J. I. P. A. M.
M. C. McN.
P. M. S.

United States of America.
Department of the Interior.
Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, with endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior.
E. W.

[Seal of Department of the Interior.]

Report of the Commissioners.

Department of the Interior, Nov. 14, 1870.

Department of the Interior, Jan. 20, 1871.

San Francisco, California, October 29, 1870.

To the Hon. Jacob D. Cox, Secretary of the Interior of the United States of America.

We, the undersigned, commissioners of the United States appointed to examine the first section of thirty and twenty-six one-hundredths (30 26-100) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, commencing at a point in the city of San Jose, in the county of Santa Clara, in the State of California, where the said railroad and telegraph line connects with

[Internal revenue certificate. 5 Five 5. Oct. 29, 1870. W. S. 5 cents 5.]

the railroad formerly known as the "San Francisco & San José Railroad" (now consolidated with the Southern Pacific Railroad), and thence running southerly along the line of said Southern Pacific Railroad to the end of the thirtieth and twenty-sixth one-hundredth (30 26-100) mile from said point of commencement, said thirtieth and twenty-sixth one-hundredth mile being at or near the town of Gilroy, in the said county of Santa Clara, California, certify that we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the Government should accept as first class; that in this distance of thirty

and twenty-six one-hundredth (30 26-100) miles there are—

13,765 feet of level line.
19,100 feet of grades, 0 to 5 feet per mile.
14,675 feet of grades, 5 to 10 feet per mile.
40,143 feet of grades, 10 to 15 feet per mile.
25,100 feet of grades, 15 to 20 feet per mile.
21,500 feet of grades, 20 to 25 feet per mile.
16,900 feet of grades, 25 to 30 feet per mile.
8,600 feet of grades, 30 to 31.68 feet per mile.

Total length, 159,783 feet, or 30 26-100 miles.

Maximum grade, 31.68 feet.

That also in this distance there are—

151,811.3 feet of straight lines.
3,957 feet of curves of 1 degree.
781.7 feet of curves of 2 degrees.
2,248 feet of curves of 3 degrees.
985 feet of curves of to 9° 11″ degrees.

Total length of 159,783 feet—30 26-100 miles.

Minimum radius, 624.6 feet, tangents and curves.

That all the iron is of American manufacture and of the best quality; that the rails weigh not less than fifty pounds per lineal yard, and the joints are made with fish-plates, and that all the rails are fastened with four spikes to each tie.

That there are six sidings, having an aggregate length of 7,304 feet, connected with the main track at each end with good switches; that in addition to the foregoing there are four sidings and spur tracks, having an aggre-

gate length of 2,850 feet, connected with the main track by means of a similar switch at one end only; that there are 2,400 ties per mile of redwood or red-cedar timber, 6 by 8 inches by 8 feet long; that the said section is ballasted with gravel to a depth of from 6 to 8 inches below the bottom of the ties.

That there are five bridges, as follows:

1 trestle bridge, 60 feet long, 5 spans, 12 feet each.
1 trestle bridge, 48 feet long, 4 spans, 12 feet each.

Total, 101 feet 9 spans, 12 feet each.

1 pile bridge 132 feet long, 11 spans, 12 feet each.
1 beam truss, 45 feet long, resting on timber abutments.
1 bridge across the Llagas creek, consisting of one span of Howe truss, 150 feet, resting on timber abutments.

That there are 25 culverts, as follows:

3 box culverts, 1 x1 feet, of redwood.
1 " " 1 x1½ feet, of redwood.
3 " " 1½x2 feet, of redwood.
1 " " 1¾x2¼ feet, of redwood.
7 " " 2 x3 feet, of redwood.
1 " " 2½x2½ feet, of redwood.
3 " " 2½x3½ feet, of redwood.
1 " " 2½x3 feet, of redwood.
4 open drains, 12 feet span, of redwood.
1 " " 24 feet span, of redwood.

25 culverts.

(No stone suitable for building purposes could be found within a distance of ten miles of the line of the railroad.)

That there are four water tanks of 45,000 gallons' capacity, as follows:

At San Jose,	1 t'k,	5,000 gals.,	supplied	by hydraulic ram.	
" 12-mile House,	1 "	5,000 "	"	"	hand pump and wind-mill.
" Gilroy,	1 "	30,000 "	"	"	wind-mill.
" Gilroy,	1 "	5,000 "	"	"	hand pump.
		45,000			

That there are no coal-houses; coal not being used for locomotive fuel, none are required.

There is one wood-house at Gilroy, 20x50 feet. Wood-houses have not yet been built at other points, trains at present taking wood from the places where the same is delivered along the line of the road. We have the assurance of the officers that suitable wood-houses will be built as soon as a sufficient length of road is completed to form an independent operating division, so that they can be located at proper points to accommodate through trains.

That no section-houses have been built, the hotels and farmhouses along the line of the road affording ample accommodation for all the workmen employed.

That there are station buildings for the accommodation of the passenger and freight business as follows:

At San Jose a passenger-house, 20x45 feet, built of wood, sided and fitted up with dressed lumber and covered with shingles.

Also one freight-house, built of brick, 40x350 feet, and covered with shingles. At the 12-mile house, 15-mile house, and 18-mile house there are extensive platforms, and buildings formerly used for hotels are being used for freight and passenger houses at those points.

At Gilroy a passenger-house, 20x80 feet, built of wood, sided with dressed lumber and covered with shingles.

At Gilroy one freight-house, built of wood, 40x350 feet, sided with dressed lumber and covered with shingles; also one freight-house, built of wood, 80x200 feet, sided with rough lumber and covered with shingles. These buildings are very superior.

The buildings, including the passenger and freight depots, etc., as heretofore described, are more than sufficient for the present requirements and business of the road. Should its future business require an extension of the present buildings or the erection of new ones, we have in this, also, the assurance of the officers that they will be supplied in proper time and place.

That there are one locomotive stall and one engine-house, of wood, 20x60 feet, at San Jose, and two locomotive stalls at Gilroy; that lately the San Francisco and San Jose Railroad was consolidated with the Southern Pacific Railroad, under the general name of "Southern Pacific Railroad," and the shops owned by the consolidated company are more than sufficient for the thorough repair of the locomotives and other rolling stock of the entire line of its railroad.

That there are two turntables—one at San Jose, with 250 feet of track, and one at Gilroy, with 195 feet of track.

That there are 4 locomotives, 4 passenger cars, 2 baggage cars, 26 box cars, 20 flat cars, 4 dump cars, and 1 hand car provided for in this section (30 26-100) miles); that these are in addition to 6 locomotives, 16 first-class passenger cars, 3 second-class passenger cars, 3 smoking

cars, 1 first-class passenger and baggage car, 1 hunting car, 1 paymaster's car, 1 boarding-house construction car, 8 dump cars, 16 cattle cars, 69 flat cars, and 33 box cars used on the line, 50 miles between San Francisco and San Jose (lately consolidated with the Southern Pacific Railroad), and also used on this section when and as the necessities of commerce and travel require it; that all the material above described was procured for this road direct from the shops which formerly belonged to the San Francisco & San Jose Railroad Company in San Francisco (but now the property of the Southern Pacific Railroad Company), and from the shops of first-class eastern manufacturers.

That said thirty 26-100 miles of railroad and the telegraph line connected therewith are constructed, as near as may be, on the route indicated by the map filed by the Southern Pacific Railroad Company in the department of the interior on the 3d of January, 1867.

That said section of railroad and telegraph line or any part thereof has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

And we do certify that this section (30 26-100 miles) of railroad was fully completed and equipped, as above stated, on or before the first day of May, 1869, and that the same was fully constructed, completed, and equipped within the time and in the manner required by law, and is first-class.

We also certify that the telegraph line (which was built simultaneously with the line of road) is constructed as follows:

Not less than 18 redwood poles to the mile; size at bottom, 8x8 inches; at top, 4x4 inches; length, 26 feet; and they are set in the ground to a depth of four feet. Number 11 wire, American compound, steel core with copper covering, 113 pounds to the mile, is used, that being the most expensive wire and best adapted for telegraph lines in a country similar to that through which this road is located. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

And we do certify that it is first class.

WILLIAM SHERMAN,
CALVIN BROWN,
THOMAS S. SHANNON,

City and County of San Francisco. } ss.
State of California, }

William Sherman, Calvin Brown, and Thomas B. Shannon, being duly sworn severally, each for himself says that he is United States railroad commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

WILLIAM SHERMAN,
CALVIN BROWN,
THOMAS S. SHANNON,

Subscribed and sworn to before me, Ogden Hoffman, United States district judge of United States District

Court for California, this twenty-ninth day of October, A. D. 1870, said court being a court of record. Witness my hand and the seal of said court.

OGDEN HOFFMAN,
U. S. Dist. Judge for Cal.

I hereby certify that Ogden Hoffman is the acting judge of said court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court this twenty-ninth day of October, A. D. 1870.

EDW'D B. COTTER,
Clerk U. S. Dist. Court, Dist. of California.

[Seal of the U. S. Dist. Court, Dist. of California.]

Amended Report.

Department of the
Interior,
Jan. 20, 1871.

San Francisco, California,
December 29", A. D. 1870.

To Hon. C. Delano,
Secretary of the Interior of the United States of America.

We, the undersigned, commissioners of the United States appointed to examine the first section of thirty 26-100 (30 26-100) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, commencing at a point in the city of San Jose, in the county of Santa Clara, in the State of California, where the said railroad

Inter. revenue, inland exchange. C. B. 5 Five. 5,

Dec. 29, 1870. 5. cents. 5.] and telegraph line connects with the railroad formerly known as the "San Francisco and San Jose Railroad" (now consolidated with the Southern Pacific Railroad), and thence running southerly along the line of the said Southern Pacific Railroad to the end of the thirtieth 26-100 (30 26-100) mile from said point of commencement, said thirtieth 26-100 mile being at or near the town of Gilroy, in the said county of Santa Clara, California, certify that we have carefully examined such section, and that the alignment and grades are as represented on the map and profile which accompanied the report heretofore, on October 29, 1870, made by us on said section of thirty 26-100 (30 26-100) miles of railroad and telegraph line to your department, and are such as, in view of the capabilities of the ground, the Government should accept as first class; that in this distance of thirty 26-100 miles there are—

13,765	feet of level line.								
19,100	"	"	grades,	0	to	5	feet	per	mile.
14,675	"	"	"	5	"	10	"	"	"
40,143	"	"	"	10	"	15	"	"	"
25,100	"	"	"	15	"	20	"	"	"
21,500	"	"	"	20	"	25	"	"	"
16,900	"	"	"	25	"	30	"	"	"
8,600	"	"	"	30	"	31.68	"	"	"

Total length, 159,783 feet, or 30 26-100 miles.

Maximum grade, 31 68-100 feet.

That also in this distance there are—

151,811 3-10	feet	of	straight	lines.
3,957	"	"	curves	of 1°
2,248	"	"	"	" 3°
781 7-10	"	"	"	" 2°
985	"	"	"	" 9° 11″

Total length, 159,783 — 30 26-100 miles.

Minimum radius, 624 6-10 feet of tangents and curves.

That all the iron is of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the rails weigh fifty (50) pounds per lineal yard, and that the joints are made with fish plates, and that all the rails are fastened with four spikes to each tie.

We have been informed by the president and managers of the road that the iron above-mentioned was contracted for, shipped, paid for, and laid on the road-bed before the company or any of its agents had knowledge of the standard and rules for the construction of the Southern Pacific Railroad adopted by the department of the interior and before such rules and standard had been furnished them from any source; that there are now 3,000 tons of iron purchased, shipped, and on the way to this city, all of which is 56 pounds per lineal yard, and that all iron hereafter to be purchased will conform to that standard.

We are of opinion, in view of the fact that the country through which this section of the road passes is quite a level plain, that a fifty-pound rail is there as suitable, if not superior, for all practicable purposes of commerce to a

60-pound rail in a mountainous country, where heavy grades are a necessity and very heavy traction engines are required to be used.

There are six sidings, having an aggregate length of 7,304 feet, connected with the main track at each end with good switches; that in addition to the foregoing there are four sidings and spur tracks, having an aggregate length of 2,850 feet, connected with the main track by means of a similar switch at one end only; that there are 2,400 ties per mile, of redwood or red-cedar timber, 6 by 8 inches by 8 feet long; that the said section is ballasted with gravel to a depth of from six to eight inches below the bottom of the ties.

That there are five bridges, as follows:

1 trestle bridge, 60 feet long, 5 spans, 12 feet each.
1 " " 48 " " 4 " 12 " "
1 pile bridge, 132 feet long, 11 spans, 12 feet each.
1 beam truss, 45 feet long, resting on abutments of timber.
1 bridge across the Llagas creek, consisting of one span of Howe truss, 150 feet, resting on abutments of timber.

That there are twenty-five culverts, as follows:

3 box culverts,	1	x 1	feet of redwood or red cedar.	
1 " "	1	x 1½	"	"
3 " "	1½	x 2	"	"
1 " "	1¾	x 2¼	"	"
7 " "	2	x 3	"	"
1 " "	2½	x 2½	"	"
3 " "	2½	x 3½	"	"
1 " "	2½	x 3	"	"
4 open drains, 12-feet span,			"	"
1 " "	24	" "	"	

25 culverts.

No stone suitable for building purposes could be found within a distance of ten miles of the road. The material used in the construction of trestles, culverts, and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties,) well known on the Pacific Coast and universally sought after on account of its great durability and resistance of decay. It can be seen in many old buildings in California, where for fifty and seventy-five years it withstood the ravages of time and the elements and is now as sound and strong as when first put in place. We have, however, the unqualified assurances of the president and directors that the culverts and bridge abutments will be rebuilt in stone when and as the same becomes necessary and suitable material can be found within a reasonable distance of the line of the road.

That there are four water tanks of 45,000 gallons' capacity as follows:

At San Jose,	1 tank,	5,000	gallons,	supplied by hydraulic ram.	
At 12-mile House,	1 "	5,000	"	"	" hand pump and wind-mill.
At Gilroy,	1 "	30,000	"	"	" wind-mill.
At Gilroy,	1 "	5,000	"	"	" hand pump.
Total,		45,000			

That there are no coal-houses; coal not being used for locomotive fuel, none are required.

There is one wood-house at Gilroy, 20 x 50 feet. Wood-houses have not yet been built at other points, trains at present taking wood from the places where the same is delivered along the line of the road. The officers of the company assure us that suitable wood-houses will be built as soon as a sufficient length of road is completed to form an independent operating division, so that they can be located at proper points to accommodate through trains.

That no section-houses have been built, the hotels and farming-houses along the line of the road affording ample accommodations for all the workmen employed.

That there are station buildings for the accommodation of the passenger and freight business as follows:

At San Jose, a passenger-house, 20 x 45 feet, built of wood, sided and fitted up with dressed lumber and covered with shingles.

Also one freight house, built of brick, 40 by 350 feet, and covered with shingles. At 12-mile house, 15-mile house, and 18-mile house there are extensive platforms, and buildings formerly used for hotels are now used for freight and passenger-houses at those points.

At Gilroy, a passenger-house, 20x80 feet, built of wood, sided with dressed lumber, and covered with shingles.

At Gilroy, one freight house, built of wood, 40 by 350 feet, sided with dressed lumber and covered with shingles; also one freight house, built of wood, 80x200 feet, sided with rough lumber and covered with shingles. These buildings are very superior and would be considered on any railroad handsome and convenient structures and fully ample for all business purposes.

The buildings, including the passenger and freight depots, etc., as heretofore described, are more than sufficient for the present requirements and business of the road. Should its future business require an extension of the present buildings or the erection of new ones, we have in this, also, the assurance of the offices that they will be supplied in proper time and place.

That there are one locomotive stall and one engine-house of wood, 20x60 feet, at San Jose, and two locomotive stalls at Gilroy; that lately the "San Francisco and San Jose Railroad" was consolidated with the Southern Pacific Railroad," and the shops owned by the consolidated company are more than sufficient for the thorough repair of the locomotives and other rolling stock of the entire line of its railroad.

That there are two turntables—one at San Jose, with 250 feet of track, and one at Gilroy, with 195 feet of track.

That there are four locomotives, four passenger cars, two baggage cars, twenty-six box cars, twenty flat cars, four dump cars, and one hand car provided for this sec-

tion (30 26-100 miles); that these are in addition to six locomotives, sixteen first-class passenger, three second-class passenger cars, three smoking cars, one first class passenger and baggage car, one hunting car, one paymaster's car, one boarding-house construction car, eight dump cars, sixteen cattle cars, sixty-nine flat cars, and thirty-three box cars used on the line (50 miles) between San Francisco and San Jose (lately consolidated with the Southern Pacific Railroad, and also used on this section when and as the necessities of commerce and travel require it; that all the material above described was procured for this road direct from the shops which formerly belonged to the San Francisco and San Jose Railroad Company in San Francisco (but now the property of the Southern Pacific Railroad Company), and from the shops of first-class eastern manufacturers.

That said thirty and twenty-six one-hundredths miles of railroad and telegraph line connected therewith are constructed, as near as may be, on the route indicated by the Southern Pacific Railroad Company in the department of the interior on the third of January, 1867.

That said section of railroad and telegraph line or any part thereof has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

And we do certify tht this section, thirty and twenty-six one hundredths miles of railroad and telegraph, was fully completed and equipped, as above stated, on or before the first day of May, 1869, and that the same was

fully constructed, completed, and equipped within the time and in the manner required by law, and is first-class.

We also certify that the telegraph line (which was built simultaneously with the line of the road) was constructed as follows:

Not less than eighteen redwood poles to the mile; size at bottom, 8x8 inches; at top, 4x4 inches; length, twenty-six feet; and they are set in the ground to a depth of four feet. Number eleven wire, American compound, steel core with copper covering, one hundred and thirteen pounds to the mile, is used, that being the most expensive wire and best adapted for telegraph lines in a country similar to that through which the road is located. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

And we do certify that it is first class.

In conclusion, we wish to state that in the building, equipment, and furnishing of the railroad and telegraph line the company seems to evince a sincere desire to construct a first-class road, and to conform in all things, as far as possible, to the spirit and intent of the law.

Respectfully submitted,

WILLIAM SHERMAN,

CALVIN BROWN,

Commissioners.

City and County of San Francisco, } ss.
State of California. }

William Sherman and Calvin Brown, being duly sworn severally, each for himself says that he is United States railroad commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

WILLIAM SHERMAN,
CALVIN BROWN.

Subscribed and sworn to before me by William Sherman on the twenty-ninth and by Calvin Brown this thirtieth day of December, A. D. 1870.

OGDEN HOFFMAN,
Judge of the United States District Court for California.

I hereby certify that Ogden Hoffman is the acting judge of said Court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said Court this thirtieth day of December, A. D. 1870.

EDWARD B. COTTER,
Clerk United States District Court, District of California.

_____, } ss.
_____. }

Thomas B. Shannon, being duly sworn, says that he is United States railroad commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

THOMAS B. SHANNON,
Commissioner.

Subscribed and sworn to before me, A. B. Olin, a justice of the Supreme Court of the District of Columbia, this twelfth day of January, A. D. 1871, said Court being a court of record.

A. B. OLIN,
Justice Sup. Court, D. C.

I hereby certify that A. B. Olin is a justice of said Court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said Court this twelfth day of January, A. D. 1871.

R. J. MEIGS, Clerk.
By L. P. WILLIAMS,
Assistant clerk.

Internal revenue certificate. 5 Five 5, Jan. 1871. 5 cents. 5.

[Seal Supreme Court of the District of Columbia.]

Letter of the Secretary.

Department of the Interior,
Jan. 20, 1871.

Jno. B. B. Ld. gt. R. R.

Department of the Interior.

Washington, D. C., January, 18, 1871.

Sir: I have the honor to submit herewith for your action the reports dated, October 29, and December 29, 1870, of Messrs. William Sherman, Calvin Brown, and Thomas B. Shannon, appointed by you to examine and

report on the first section of thirty and twenty-six one-hundredths miles of the road and telegraph line of the Southern Pacific Railroad Company, commencing at a point in the city of San Jose, in the county of Santa Clara, in the State of California, when the said railroad and telegraph line connects with the railroad formerly known as the "San Francisco and San Jose Railroad," and thence running southerly along the line of the said Southern Pacific Railroad to the end of the thirty and twenty-six one-hundredths miles from said point of commencement, being at or near the town of Gilroy, in said county and State.

The commissioners in their reports represent that this section of road is completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance and is first-class. I therefore respectfully recommend the acceptance of the same and the issue to said company of patents for lands due on account of the construction thereof agreeably to the provisions of the act of Congress entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July 27, 1866, and the acts amendatory thereof, approved July 25, 1868, and June 28, 1870.

I am, sir, very respectfully, your obedient servant,

C. DELANO,
Secretary.

[Department of the Interior,
Jan. 20, 1871.
The President.]

[Endorsement]: Southern Pacific. Department of the Interior. January 18, 1871. Columbus Delano, Secretary.

Submits to the President reports of commissioners on the first section of thirty and twenty-six one-hundredths miles of road and telegraph line of the Southern Pacific Railroad Company, with recommendations on the subject.

Approval by the President.

Executive Mansion, January 19, 1871.

The within recommendations are hereby approved, and the secretary of the interior will issue the necessary orders to carry the same into effect.

21, 1-295. U. S. GRANT.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendant's Exhibit No. 259. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office, November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 259 in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600,

before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 261.

Certificate.

A. M.
J. T. S.
W. H. B.

UNITED STATES OF AMERICA.

Department of the Interior.

Washington, D. C., July 30, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior.

[Seal of department
of the Interior.]

E. W.

LETTERS OF INSTRUCTIONS.

Department of the Interior.
Washington, D. C.

3 August, 1871.

Gentlemen:

The Southern Pacific Railroad Company of California having filed in this department the notice required by the resolution of Congress, approved June 28, 1870, that the second section of twenty miles of their road and telegraph line had been completed, commencing at Gilroy, (end of first section of thirty and twenty-six one hundredths miles) and terminating at the fifty and twenty-six one-hundredths mile, you have been appointed by the president commissioners to examine and report upon the same. The appointment will take effect from and after its acceptance by you and your subscribing to the oath of office, form of which is herewith.

In case you accept the appointment, you will immediately advise this department, inclosing the oath of office duly executed. It requires three commissioners to make the examination and sign the report; so that, if either of you should decline, the others will not be authorized to act until they are advised of the appointment of another commissioner to fill the vacancy.

The fifth section of the act of July 27, 1866, provides that the "railroad shall be constructed in a substantial and workmanlike manner, with all necessary draws, culverts, bridges, viaducts, crossings, turnouts, stations, and watering-places, and all other appurtenances, includ-

ing furniture and rolling stock, equal in all respects to railroads of the first-class when prepared for business, with rails of the best quality, manufactured from American iron. And a uniform gauge shall be established throughout the entire length of the road. And there shall be constructed a telegraph line, of the most substantial and approved description, to be operated along the entire line."

The act of July 25, 1868, gave the company until the first day of July, 1870, for the construction of the first thirty miles, and required them to construct at least twenty miles every year thereafter, and the whole line of their road within the time required by law.

The resolution before-mentioned provides that said company "may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the department of the interior on the third day of January, 1867." You will be guided in the discharge of your duties as commissioners by the "circular of instructions for the examination of railroads," (copy herewith,) dated April 28, 1871. You will also report whether said twenty miles, or any part thereof, have been constructed "on the line of any other railroad route, to aid in the construction of which lands have heretofore (prior to July 27, 1866,) been granted by the United States." Your report must be verified under oath, which may be taken before a United States commissioner, a clerk of a court, or a notary public. With your report, you will forward a map and profile of the section; the map to be certified by the chief engineer of the company, as required on the first section.

said act of 1866 fixes your compensation at ten dollars per day for each and every day actually and necessarily employed, and ten cents for each mile actually and necessarily traveled in discharging the duties required of you, which per diem and mileage shall be in full compensation for your services, and to be paid by the company. Duplicates of the receipts given by you to the company on payment thereof will be transmitted with your report.

Your report will be addressed to the secretary of the interior.

The commissioners will meet at San Francisco, Cal., as soon after the receipt hereof and acceptance as may be convenient.

Very respectfully,

Your obedient servant,

B. R. COWEN,

Acting secretary.

Messrs.

Geo. Oulton, San Francisco, Cal.;

Robt. Lee, West Zanesville, Ohio;

Geo. P. Wilson, Winona, Minnesota,

Commissioners on the Southern Pacific Railroad.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 261. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Southern District of California. }
United States of America, } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office, November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 261 in the case entitled, The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,

[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 262.

REPORT.

Certificate.

J. I. P. A. M.
P. M. S.

United States of America.

Department of the Interior.

Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the

originals, with endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior,
E. W.

[Seal of department of the interior.]

Report of Commissioners.

Department of the interior,
Oct. 24, 1871.

San Francisco, California,
September 12, 1871.

To Hon. C. Delano, secretary of interior of the United States of America.

Sir:

We, the undersigned, commissioners of the United States, appointed to examine the second section of twenty (20) miles of the railroad and telegraph of the Southern Pacific Railroad Company, commencing at or near Gilroy, in the county of Santa Clara, California,

Inter. revenue certificate. 5. Five 5. Gr. O., Sept. 12, 1871. 5. cents 5.]

at the end of the thirtieth and twenty-six one-hundredths (30 26-100) mile of said railroad and telegraph and terminating at the end of the fiftieth twenty-six one-hundredths (50 26-100) mile, certify that we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map and

profile and are such as, in view of the capabilities of the ground, the government should accept as first-class.

That in this distance (20 miles) there are—

20,421 feet of level line.
4,000 feet of grades, 5 to 10 feet per mile.
30,367 feet of grades, 10 to 15 feet per mile.
6,600 feet of grades, 15 to 20 feet per mile.
24,700 feet of grades 20 to 25 feet per mile.
3,000 feet of grades, 25 to 30 feet per mile.
16,500 feet of grades, 65 to 70 feet per mile.

Total length 105,600 feet, or 20 miles.

Maximum grade, 66 feet.

That also in this distance of 20 miles there are—

88,194 feet of straight lines.
400 feet of curves, 0° 15′.
5,790 feet of curves, 0° 20′.
1,111 feet of curves, 0° 22½′.
5,000 feet of curves °.
1,960 feet of curves, 1° 20′.
1,130 feet of curves, 2°.
2,015 feet of curves, 3°.

Total length 105,600 feet, or 20 miles.

Minimum radius, 1,910 feet, tangents and curves.

(The following paragraph omitted by mistake from the body of this report.)

"The excavations and embankments are in strict conformity to the requirement of law and the instructions."

GEO. OULTON,
GEORGE P. WILSON,
ROBERT LEE,
Railroad Commissioners.

September 12, 1871.

That all the iron is of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ inches); that the rails weigh not less than fifty-six (56) pounds per lineal yard, and the joints are made with fish-plates, and that all the rails are fastened with four spikes to each tie; that there are five sidings, having an aggregate length of 4,968 feet, connected with the main track at each end with good switches; that there are 2,450 ties per mile, of redwood or red cedar timber, in all cases at least six by eight inches by eight feet long (the cross-ties are, in the aggregate, over eight inches wide and make a bearing surface equal to at least 2640 ties per mile); that the said section is ballasted with gravel to a depth of six inches below the bottom of the ties.

That there are eight bridges, as follows:

1 trestle bridge, 30 feet long, 3 spans, 10 feet each
1 trestle bridge, 30 feet long, 3 spans, 10 feet each
1 trestle bridge, 80 feet long, 8 spans, 10 feet each
1 trestle bridge, 176 feet long, 11 spans, 16 feet each
1 pile bridge, crossing Pajaro river, 1,200 feet long, 75 spans, 16 feet each.
1 pile bridge, 40 feet long, 4 spans, 10 feet each
1 trestle bridge, 20 feet long, 2 spans, 10 feet each
1 trestle bridge, 30 feet long, 2 spans, 10 feet each

That there are 16 culverts, as follows:

5 box culverts, 2 x 2 feet of redwood.
1 box culvert, 2 x feet, of redwood.
2 box culverts, 3½ x 4 feet, of redwood.
2 box culverts, 4 x 5 feet, of redwood.
6 open drains, 10-feet span.

16 culverts.

No stone suitable for building purpose could be found within a distance of ten miles of the road. The material used in the construction of trestles, culverts, and bridge abutments of the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well known on the Pacific coast and universally sought after on account of its great durability and resistance of decay. It can be seen in many old buildings in California, where for fifty and for seventy-five years it withstood the ravages of time and the elements, and is now as sound and strong as when first put in place. We have, however, the unqualified assurances of the directors and managers that the culverts and bridge abutments will be rebuilt in stone when, and as the same becomes necessary and suitable material can be found within a reasonable distance of the line of the road.

That there are two water tanks of 3,000 gallons' capacity each, as follows:

At Hollister, two tanks of 3,000 gallons each, supplied from wells by windmill power.

That there are no coalhouses; coal not being used for locomotive fuel, none are required.

That there are no woodhouses, none being requisite on this section. Wood is obtained in sufficient quantities from the wood station at Gilroy. As soon as the road is extended further, so as to make an independent operating division, we are assured by the officers of the company that woodhouses will be built at proper intervals when it becomes necessary.

That no section-houses have been built, the hotels and farmhouses along the line of the road affording ample accommodation for all the workmen employed.

That there is one station for the accommodation of passenger and freight business as follows: At Hollister, 14 miles south of Gilroy, one freight and passenger house combined, built of wood, 32 feet wide by 130 feet long, sided with planed lumber, painted, and covered with shingles. On each side of the building there are platforms ten feet wide.

No water tanks or station buildings have been erected at the end of this section (an open plain and not a proper point for a station), the six miles of railroad from Hollister to the end of the fiftieth and twenty-six one-hundredths mile, although fully completed and equipped, not being yet opened for traffic.

That there is one turntable at Hollister, with 288 feet of track. It will not be necessary to construct other turntables until the road is extended further.

That there are no locomotive stalls or engine-houses, those constructed at other points on the road and heretofore reported upon being amply sufficient to meet its present requirements.

That three locomotives have been provided for this section, in addition to those already provided for the whole road and heretofore reported upon by William Sherman, Calvin Brown, and Thomas B. Shannon, United States railroad commissioners, on October 29, 1870, and on December 29, 1870. Said three locomotives were purchased at and procured from the shops of the Central Pacific Railroad Company.

No passenger or other cars have been purchased by the Southern Pacific Railroad Company since the reports above referred to, those now on hand being more than enough to accommodate present travel and commerce. Should other cars be required, the officers of the company assure us that they will be bought when and as they are needed.

That said twenty miles of railroad and telegraph line are constructed as near as may be on the line specified in the "joint resolution" concerning the Southern Pacific Railroad of California, approved June 28, 1870, to-wit, "on the route indicated by the map filed by the Southern Pacific Railroad Company in the department of the interior on the third of January, 1867."

That said section of railroad and telegraph line or any part thereof has not been constructed "on the line of any other railroad route, to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That this section of railroad and telegraph line was completed and equipped on the thirtieth day of June, 1871, and that both are first-class.

That the telegraph line is constructed as follows: Not less than thirty redwood poles to the mile; size at bottom, 8x8 inches; at top, 4x5 inches; length, 24 feet. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers, and we do certify that it is first-class.

Respectfully submitted.

GEORGE OULTON,
GEORGE P. WILSON,
ROBERT LEE,
United States Railroad Commissioners.

City and County of San Francisco, } ss.
State of California, }

George Oulton, George P. Wilson, and Robert Lee, being duly sworn severally, each for himself says that he is United States railroad commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

GEORGE OULTON.
GEORGE P. WILSON.
ROBERT LEE.

Subscribed and sworn to before me, Ogden Hoffman, United States district judge for California, this twelfth day of September, A. D. 1871, said court being a court of record.

OGDEN HOFFMAN,
U. S. Dist. Judge for California.

I hereby certify that Ogden Hoffman is the acting judge of said court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court this twelfth day of September, A. D. 1871.

EDW'D B. COTTER,

Clerk United States District Court, District of California.

[Seal of the U. S. District Court, Dist. of California.]

Letter of the Secretary.

Z. B. S. Land Grant Railroads.

Department of the Interior.

Washington, D. C., 13 Oct., 1871.

Sir: I have the honor to submit herewith for your action the report dated the twelfth ultimo of Messrs. Oulton, Wilson, and Lee, appointed by you to examine and report upon the second section of twenty miles of the road and telegraph line of the Southern Pacific Railroad Company commencing at or near Gilroy, in the county of Santa Clara, California, at the end of the 30 26-100 mile and terminating at the end of the 50 26-100 mile.

The commissioners in their report represent that this section of road is completed and equipped as a first-class railroad, and that the telegraph line is finished for the same distance and is first-class. I therefore respectfully recommend the acceptance of the same and the issue to said company of patents for lands due on account of the construction thereof agreeably to the provisions of the act of Congress entitled "An act granting lands to aid in

the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved twenty-seventh July, 1866, and the acts amendatory thereof, approved twenty-fifth July, 1868, and twenty-eighth June, 1870.

Very respectfully,

Your ob't servant,

C. DELANO,

Secretary.

To the President:

[Endorsement]: (Southern Pacific.) 10830. Department of the interior. 13th Oct., 1871. Columbus Delano, secretary.

Submits to the President of the United States report of the commissioners on the second section of 20 miles of road and telegraph line constructed by the Southern Pacific Railroad Company, commencing at or near Gilroy, California, and ending at the 50 26-100 mile, with recommendations on the subject.

Approval by the President.

Executive Mansion, Oct. 23, 1871.

The within recommendations are hereby approved, and the secretary of the interior will issue the necessary instructions to carry the same into effect.

U. S. GRANT.

For twenty miles section, see 15 Stat., 1870.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 262. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Southern District of California. }
United States of America, } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 262 in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 264.

Certificate.

A. M.
M. C. M. N.
E. H. H.

United States of America.
Department of the Interior.
Washington, D. C., September 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the

original, with its endorsement, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,

Acting secretary of the interior.

E. W.

[Seal of Department of the Interior.]

ORDER APPOINTING COMMISSIONERS.

9137

Department of the
Jul
23
1872
Interior.

Executive Mansion,

Washington, D. C., July 23, 1872.

By virtue of the authority vested in the President of the United States by the fourth section of an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved July 27, 1866, L. M. Foulke, Calvin Brown and Eugene L. Sullivan, all of California, are hereby appointed commissioners to examine and report to the president of the United States upon the road and telegraph line authorized by said act and the joint resolution of Congress approved June 28, 1870, to be constructed by the Southern Pacific Railroad Company of California.

U. S. GRANT.

[Endorsement]: (Southern Pacific.) Department of the Interior.

Received 23 July, 1872.

Dated 23 July, 1872. From the President. Subject: Order appointing L. M. Foulke, Calvin Brown and Eugene L. Sullivan, Commissioners on Southern Pacific Railroad of California. Action 23 July, 1872. Respectfully referred to. Copy to Commissioners. Instructions sent, with necessary papers. ————————, Chief Clerk. Registered One—431.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 264. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 264, in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants. No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal.]

[Endorsed:] Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 265.

Certificate.

A. M.
J. T. S.
C. H. B.

United States of America.
Department of the Interior.
Washington, D. C., July 30, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting Secretary of the Interior.
E. W.

[Seal of department of the interior.]

LETTER OF INSTRUCTIONS.

Department of the Interior.
Washington, D. C.,
Twenty-third July, 1872.

Gentlemen:

The president of the Southern Pacific Railroad Com-

pany of California having filed in this department the notice required by the resolution of Congress, approved twenty-eighth June, 1870, that the third section of twenty miles of their road and telegraph line had been completed, (commencing "at the point of junction of the Southern Pacific Railroad with the San Joaquin branch of the Central Pacific Railroad, said point being about seven miles west of the town of Visalia, in the county of Tulare, California, in section 19, township 18 south, range 24 east, M. D. B. & M., and distant 1000 feet in a southeasterly direction from the intersection of the west line of said section by the line of said San Joaquin valley branch of the Central Pacific Railroad, and running in a southeasterly direction, ends at the termination of the twentieth mile therefrom, in the northwest quarter of section 30, township 21 south, range 25 east, M. D. B. & M.), you have been appointed by the President, commissioners to examine and report upon the same.

This appointment is made upon the condition that you have neither directly, nor indirectly, any interest in this corporation, nor any connection with, or bias for or against it which would interfere with an impartial performance of all the duties imposed upon you as commissioner, and it (the appointment), will be effective from the date of its acceptance, and the subscribing to the oath of office—form herewith. In case you accept, you will be pleased to advise the department at once, inclosing the oath duly executed. I transmit herewith forms of certificates to be made by the chief engineer and president of the company, attached to the map and profile which

you will be required to forward, with your report, to the "secretary of the interior."

The fifth section of the act of July 27, 1866, provides that the "railroad shall be constructed in a substantial and workmanlike manner, with all the necessary draws, culverts, bridges, viaducts, crossings, turn-outs, stations, and watering-places, and all other appurtenances, including furniture and rolling stock—equal in all respects to railroads of the first class when prepared for business, with rails of the best quality, manufactured from American iron. And a uniform gauge shall be established throughout the entire length of the road.

"And there shall be constructed a telegraph line, of the most substantial and approved description, to be operated along the entire line."

The act of twenty-fifth July, 1868, gave the company until the first day of July, 1870, for the construction of the first thirty miles and required them to construct at least twenty miles every year thereafter, and the whole line of their road as provided for in previous legislation.

The law states that said company "may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the department of the interior, on the third day of January, 1867." You will be guided in the discharge of your duties by the "circular of instructions for the examination of railroads," (copy therewith) dated April 28, 1871. You will report whether said twenty miles, or any part thereof, have been constructed "on the line of any other railroad

route to aid in the construction of which lands have heretofore (prior to July 27, 1866), been granted by the United States." Your report must be verified under oath which may be taken before a United States commissioner, a clerk of a court, or a notary public. The said act of 1868 fixes your compensation at $10 per day for each day actually and necessarily employed, and ten cents per mile for each mile actually and necessarily traveled in discharging the duties required of you, which per diem and mileage shall be in full compensation for your services, and will be paid by the company. Duplicates of the receipts given by you to the company on payment thereof, will be transmitted with your report.

As soon as the department shall have received the acceptance of this appointment and the oaths of office from each of you, an order will at once be sent, directing procedure with the examination of the section.

Very respectfully,
Your obedient servant,
W. H. SMITH,
Acting secretary.

L. M. Foulke, Esq.,
of San Francisco;
Eugene L. Sullivan, Esq.,
of do.
Calvin Brown, Esq.,
of Mare Island, Cal.
Commissioners on Southern Pacific Railroad.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs.

Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 265. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 265 in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, before Leo. Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 266.

REPORT OF THE COMMISSIONERS.

Certificate.

J. I. P. A. M.

M. C. M. N.

P. M. S.

United States of America.

Department of the Interior.

Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, with endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,

Acting Secretary of the Interior.

E. W.

[Seal of Department of Interior.]

Report.

San Francisco, California,

September 14, 1872.

Department of the Interior, Sept. 27, 1872.

To Hon. C. Delano, Secretary of Interior of the United States of America.

Sir: We, the undersigned, commissioners of the United States, appointed to examine the third section of twenty

(20) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, commencing at Goshen,

[Internal revenue certificate. 5 Five 5. Sept. 14, 1872. C. B. 5 Cents. 5.]

the point of junction of the Southern Pacific Railroad with the San Joaquin valley branch of the Central Pacific Railroad, said point being about seven (7) miles west of the town of Visalia, in the county of Tulare, California, in section nineteen (19), township eighteen (18) south, range twenty-four (24) east, Mount Diablo base and meridian, and distant one thousand (1,000) feet in a southeasterly direction from the intersection of the west line of said section by the line of said San Joaquin valley branch of the Central Pacific Railroad, and running in a southeasterly direction to the termination of the twentieth (20th) mile therefrom, in the northwest quarter (N. W. ¼) of section thirty (30), township twenty-one (21) south, range twenty-five (25) east, Mount Diablo base and meridian.

Certify:

That we have carefully examined such section and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the government should accept as first class.

That in this distance (20 miles) there are:

21,500 feet of level line.

58,100 feet of grades 0 to 5 feet per mile.

26,000 feet of 5 28-100 feet per mile.

Total length 105,600 feet, or 20 miles.

Maximum grade 5 28-100 feet.

That, also, in this distance of twenty (20) miles, there are:

101,833 3-10 feet of straight lines.
3,566 7-10 feet of curves of 0° 30′.
200 feet of curves of 1°

Total length 105,600 feet, or 20 miles.

Minimum radius, 5,730 feet of tangents and curves.

That all of the iron is of American manufacture and of the best quality; and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ inches); that the rails weigh not less than fifty-six (56) pounds per lineal yard and the joints are made with fish-plates and that all the rails are fastened with four spikes to each tie; that there are five (5) sidings, having an aggregate length of 6,700 feet, connected with the main track, at each end, with good switches, and one siding, 780 feet long, connected with the main track, at one end only, with a good switch; that there are 2,450 ties per mile, of redwood or red cedar timber, in all cases, at least, 6x8 inches by 8 feet long. (The cross-ties are, in the aggregate, over eight inches wide and make a bearing surface equal to at least 2,640 ties per mile.) That the said section is ballasted with sand, gravel and loam, of which the roadbed is composed, no other material being found within very many miles of the road. When other and more suitable material shall be found within a reasonable distance of the line of the railroad, we have the assurance of the officers that the road will be reballasted.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions:

That there are three hundred and seventeen bridges, as follows:

One truss beam bridge, sixty feet span, over Tule river, and built on piled foundations.

Two trestle bridges, twenty-four feet span, on piled foundations.

Two hundred and sixty-four trestle bridges, sixteen feet span, on piled foundations.

Four trestle bridges thirteen feet span, on piled foundations.

Thirty-four trestle bridges, twelve feet span, on piled foundations.

Twelve trestle bridges, ten feet span, on piled foundations.

Total three hundred and seventeen.

That there are no culverts, other than those already classed as bridges and mentioned above.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad. The material used in the construction of trestles, culverts and bridge abutments is the most durable the country can afford, being the black or coast redwood, or red cedar (the same used for ties), well known on the Pacific Coast and universally sought after on account of its great durability and resistance of decay. We have, however, the unqualified assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone when, and as the same becomes necessary, and suitable

material can be found within a reasonable distance of the line of the road.

That there is one water tank of 53,000 gallons' capacity at Goshen, supplied from a well by a "Knowles steam pump."

That there are no wood-houses, coal being used.

That there is one coal platform at Tulare, 20x315 feet, built in a most substantial manner. The dryness of the atmosphere (there being but a very light rainfall in winter, with no rain in summer),and the extreme mildness of the climate render the use of covering for coal entirely unnecessary. The officers promise that coal-houses shall be constructed immediately, should they be found necessary.

There is one section-house near Tulare, 30x16 feet, with a wing 12x16 feet. Also, at the same place, a tool-house, 14x20 feet, and a house for Chinese laborers, 14x24 feet, all built of wood and covered with shingles. These buildings, together with farm-houses and hotels along the line of the road, afford ample accommodations for all the workmen employed.

That there are two station buildings for the accommodation of passenger and freight business, as follows:

At Goshen, a passenger and freight house combined, 130 feet long by 32 feet wide, sided with planed lumber, painted, and covered with shingles. On each side of the building there are platforms, at least, ten feet wide.

At Tulare, a passenger and freight house combined, similar in every respect to that above described.

(Note. The railroad has been built one and fourteen one hundredths miles south of the twenty mile stake, to "Tip-

ton," the present terminus of the Visalia division of the Southern Pacific Railroad, where other buildings, fixtures, track, etc., have been finished and are now in actual use and operation in connection with this twenty mile section. They are as follows: A passenger and freight house, same in every respect as those at Goshen and Tulare. A turn-table, with 275 feet of track. A water tank, same in every respect as that at Goshen, and 4,600 feet of side track connected, at both ends, by good switches with the main track.)

That there is one turn-table at Tulare with 780 feet of track:

That, at Tulare, there are seven locomotive stalls, each of the size of fourteen feet front, twenty-one and two-twelfths feet in rear, and sixty-five feet deep, built of wood, and covered with a composition roof made of felt, tar, asphaltum and gravel, being similar in character to asphalt sidewalks, with a layer of felt underneath.

That there is one engine house at Tulare, size 98 feet front, by 148 feet in rear, and 65 feet deep, built of wood and covered with a composition roof, similar in all respects to that described above.

That no machine or repair shops have been built, those constructed at other points on the road, and heretofore reported upon, being deemed amply sufficient to meet its present requirements. We are informed by the officers of the company that it is the intention, as soon as sufficient of the railroad shall be built from which to form a new and independent operating division of any considerable length, to construct permanent machine and repair

shops in the most durable and substantial manner. And if, in the meanwhile, additional facilities should be required for repairs, or otherwise, arrangements are perfected to have them done, whenever needed, at the machine and repair shops of the San Joaquin valley branch of the Central Pacific Railroad, which connects at Goshen, aforesaid, with this section of railroad and telegraph line.

That the Southern Pacific Railroad Company owns the following rolling stock, which is used along the entire line of its railroad and is amply sufficient to accommodate present travel and commerce. We are, in this, also, assured by the officers of the company that whenever other rolling stock shall be required, it will be bought immediately.

Locomotives.

No.	Diameter of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Maker's Name.	Remarks.
	Ft. In.		Tons.		
1	4...6	12 x 15	15	Danforth, Cooke & Co., Paterson, N. J.	
2	5...0	14 x 22	25	Norris.	
3	5...0	14 x 22	25	"	
4	5...0	14 x 22	26	Danforth, Cooke & Co., Paterson, N. J.	
5	5...0	14 x 22	26	" " "	
6	5...0	16 x 24	32.	Booth & Co., San Francisco.	
7	5...0	16 x 24	32	" " "	
8	4...0	14 x 18	18	" " "	
9	5...6	17 x 22	32	Danforth, Cooke & Co., Paterson, N. J.	
10	5...0	18 x 24	34	" " "	
11	5...6	15 x 24	30	Mason, Taunton, Mass.	
12	5...6	15 x 24	31	McKay & Aldus.	
13	5...0	16 x 22	31	Norris.	
14	4...6	15 x 22	29	Danforth, Cooke & Co., Paterson, N. J.	
15	3...4				
16	4...0	10 x 18	12		
17	5...6	15 x 24	30	Mason, Taunton, Mass.	

Cars:

20	Passenger Cars.	First class.
3	Smoking "	
6	Baggage "	
3	Passenger "	Second class.
1	Hunting "	
1	Pay "	
1	Boarding "	
12	Dump "	
16	Cattle "	
88	Flat "	
89	Box	"(Of which 30 are combination.)
1	Flat	"(With pile-driver and engine.)
1	Directors' "	
18	Hand "	
21	Push "	

Total. 281 cars.

That said twenty miles of railroad and telegraph line are constructed, as near as may be, on the line specified in the "Joint Resolution" concerning the Southern Pacific Railroad of California, approved June 28, 1870, to-wit, "On the route indicated by the map filed by the Southern Pacific Railroad Company in the department of the interior on the 3d of January, 1867."

That said section of railroad and telegraph line, or any part thereof, has not been constructed "on the line of any other railroad route, to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That this section of railroad and telegraph line was completed and equipped on the thirtieth day of June, 1872, and that both are first-class.

That the telegraph line is constructed as follows: Not less than thirty redwood poles to the mile; size at bottom, 8x8 inches; at top, 4x5 inches; length, 24 feet; and that they are set in the ground to a depth of four feet. Number 9 galvanized wire is used.

The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

Respectfully submitted,

LEWIS M. FOULKE.
CALVIN BROWN,
EUGENE L. SULLIVAN,
United States Railroad Commissioners.

State of California,
City and County of San Francisco. } ss.

Lewis M. Foulke, Calvin Brown, and Eugene L. Sullivan, being duly sworn, severally, each for himself, says: that he is United States Railroad Commissioner, and that the matters and things set forth in the foregoing statement, by him subscribed, are true and correct.

LEWIS M. FOULKE.
CALVIN BROWN.
EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Robert F. Morrison, District Judge of the Fourth Judicial District in and for the city and county of San Francisco, State of Cal-

iforna, this fourteenth day of September, A. D. 1872, said court being a court of record.

ROBERT F. MORRISON,
District Judge of the Court aforesaid.

I hereby certify that Robert F. Morrison is the acting judge of said court; that I am well acquainted with his handwriting and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court this fourteenth day of September, A. D. 1872.

WILLIAM HARNEY,
County Clerk of the city and county of San Francisco, California, and ex-officio clerk of the court aforesaid.
[Seal Fourth District
Court of California,
San Francisco county.]

Letter of the Secretary.

Department of the Interior,
Oct. 1, 1872.

Z. B. S. Railroads.

Department of the Interior,
Washington, D. C., 28th Sept., 1872.

Sir: I have the honor to submit herewith, for your action, the report, dated 14th instant, of Messrs. Foulke, Brown, and Sullivan, appointed by you to examine and report upon the third section of twenty miles of the road and telegraph line of the Southern Pacific Railroad Company, "commencing at Goshen, the point of junction of the Southern Pacific Railroad with the San Joaquin Val-

ley branch of the Central Pacific Railroad, said point being about seven miles west of the town of Visalia, in the county of Tulare, California, in section nineteen, township eighteen south, range twenty-four east, Mount Diablo base and meridian, and distant one thousand feet in a southeasterly direction from the intersection of the west line of said section, by the line of the said San Joaquin Valley branch of the Central Pacific Railroad, and running in a southeasterly direction, to the termination of the twentieth mile therefrom, in the northwest one-quarter of section 30, township 21 south, range 25 east, Mount Diablo base and meridian."

The commissioners in their report represent that this section of road is completed and equipped as a first-class railroad, and that the telegraph line is finished for the same distance, and is first-class. I therefore respectfully recommend the acceptance of the same, and the issue to said company of patents for lands due on account of the construction thereof, agreeably to the provisions of the act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast," approved 27th July, 1866, and the acts amendatory thereof, approved 25th July, 1868, and 28th June, 1870.

Very respectfully,

Your obd't svt.,

B. R. COWEN,

Acting Secretary.

To the President.

(Southern Pacific.) 10316. Department of the Interior, 28th September, 1872. B. R. Cowen, Acting Secretary.

Submits to the President of the United States report of commissioners on third section of twenty miles of road and telegraph line of the Southern Pacific Railroad Co.

Approval by the President.

Executive Mansion,

October 1, 1872.

The within recommendations are approved, and the secretary of the interior will issue the necessary instructions to carry them into effect.

U. S. GRANT.

Map and copy of this letter and endorsement sent to G. L. O., 2d Oct., 72.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States v. Southern Pacific Railroad Co. et al. No. 600. Defendant's Exhibit No. 266. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America.
Southern District of California, } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendant's Exhibit No. 266, in the case entitled The United States of America, complainants, vs. The Southern

Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, Special Examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 268.

Certificate.

A. M.
J. T. S.
H. H. B.

United States of America.
Department of the Interior.
Washington, D. C., July 30, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed the day and year first above written.

JOHN M. REYNOLDS,
Acting Secretary of the Interior.
E. W.

(Seal of Department of the Interior.)

LETTER OF INSTRUCTIONS.

Department of the Interior.

Washington, D. C., seventh July, 1873.

Gentlemen:

The president of the Southern Pacific Railroad Company, by letter of twentieth ultimo, having advised the department of the completion of another section of road and telegraph line and requested that commissioners examine and report thereon, you are, by virtue of your appointment by the President of the United States on the twenty-third of July last, hereby notified and authorized to examine the fourth section of twenty miles of said road and telegraph, from a point at the end of the twentieth mile on the line of said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley Branch of the Central Pacific Railroad (said point of commencement being in the northwest one-quarter of section 30, township 21 south, range 25 east, Mount Diablo base and meridian), and running in a southeasterly direction to the termination of the twentieth mile therefrom, in the northwest one-quarter of section 2, township 25 south, range 25 east, Mount Diablo base and meridian.

You will observe in every respect, the instructions given you by the department on the twenty-third July, 1872.

Very respectfully,

C. DELANO,

Secretary.

L. M. Foulke, Esq., San Francisco, Cal.; Eugene L. Sullivan, Esq., San Francisco, Cal., and Calvin Brown,

Esq., Mare Island, Cal., Commissioners on the Southern Pacific Railroad.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al., No. 600. Defendant's Exhibit No. 268. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendant's Exhibit No. 268 in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 269.

REPORT OF COMMISSIONERS.

Certificate.

J. I. P A. M.

P. M. S.

United States of America.

Department of the Interior.

Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, with endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JOHN M. REYNOLDS,

Acting Secretary of the Interior.

E. W.

(Seal of Department of Interior.)

Report.

Department of the Interior,
Aug. 8, 1873.

San Francisco, California, July 23, 1873.

To Hon. C. Delano, Secretary of Interior of the United States of America.

Sir: We, the undersigned, commissioners of the United States appointed to examine the fourth (4th) section of twenty miles of the railroad and telegraph line of the Southern Pacific Railroad Company, commencing at a point at the end of the twentieth (20th) mile on the line of

said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley branch of the Central Pacific Railroad (said point of commencement being in the northwest quarter (N. W. ¼) of section thirty (30), township twenty-one (21) south, range twenty-five (25) east, Mount Diablo base and meridian), running thence in a southeasterly direction and ending at the termination of the twentieth mile therefrom in the northwest quarter (N. W. ¼) of section two (2), township twenty-five (25) south, range twenty-five (25) east, Mount Diablo base and meridian,

Certify:

That we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the government should accept as first class; that in this distance (20 miles) there are—

25,125 feet of level line.
45,300 feet of grades, 0 to 5 feet per mile.
31,675 feet of grades, 5 to 10 feet per mile.
3,500 feet of grades, 10.56 feet per mile.

105,600 feet, or 20 miles.

Maximum grade, 10.56 feet per mile.

That also, in this distance of twenty miles, there are 105,600 feet, or 20 miles, of straight line. There are no curves.

That all the iron is of American manufacture and of the best quality, and that the road is of the gauge of four

feet, eight and one-half inches (4 ft. 8½ in.); that the rails weigh not less than fifty-six pounds per lineal yard, and the joints are made with fish-plates, and that all the rails are fastened with four spikes to each tie; that there are three (3) sidings, having an aggregate length of 6,193 feet, connected with the main track at each end with good switches; that there is one turntable track 300 feet long, connected with the main track with a good switch; that there are 2,450 ties per mile of redwood or red-cedar timber, in all cases at least 6 x 8 inches by 8 feet long (the cross-ties are in the aggregate over eight inches wide and make a bearing surface equal to at least 2,640 ties per mile); that the said section is ballasted with sand, gravel, and loam, of which the roadbed is composed, no better material being found within many miles of the line of the railroad. When more suitable material shall be found within a reasonable distance, we have the assurance of the officers that the road will be reballasted.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are 11 bridges, all built on piled foundations, as follows:

1 trestle bridge, 715.5 feet long, having 45 spans 15.9 feet each, crossing Deer creek.

1 trestle bridge, 63.6 feet long, having 4 spans 16 feet each.

1 trestle bridge, 48 feet long, having 3 spans 16 feet each.

6 trestle bridges, 32 feet long, having 2 spans 16 feet each.

2 trestle bridges, 16 feet long, having 1 span 16 feet each.

Total, 11 trestle bridges.

That there are 35 culverts, as follows:

1	box	culvert,	1½	x	2	feet,	of redwood.
9	"	"	2	x	2	" "	"
23	"	"	2	x	3	" "	"
1	"	"	3	x	4	" "	"
1	"	"	4	x	4	" "	"

Total, 35 culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad. The material used in the construction of trestles, bridges, culverts, and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well known on the Pacific coast and universally sought after on account of its great durability and resistance to decay. We have, however,

the assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone when and as the same may become necessary and suitable material can be found within a reasonable distance of the line of the road.

That at Tipton there is one water tank of 53,000 gallons' capacity, supplied from a well by a "Knowles steam pump."

That there are no woodhouses.

That there is a coal-platform at Tipton, 16 x 100 feet, built in a most substantial manner. The dryness of the atmosphere, there being but a very light rainfall in winter, with no rain in summer, and the extreme mildness of the climate render the use of covering for coal entirely unnecessary. If, however, they should be found requisite the officers promise that coalhouses shall be constructed immediately.

That there is near Delano one sectionhouse in course of construction, 30 x 16 feet, with a wing of 12 x 16 feet, and a house for Chinese laborers, 14 x 24 feet, all to be built of wood and covered with shingles. These, when completed, will afford ample accommodations for all the workmen employed.

That on this section there is one station building at Tipton, being a passenger and freight house combined, 32 x 150 feet, sided with planed lumber, painted and covered with shingles. On each side of the building there are platforms ten (10) feet wide.

That there is one turntable at Tipton, with 300 feet of track.

That there is one large stock cattle-pen at Tipton.

That twelve miles southerly from Tipton there is a siding 1,593 feet long which is used for station purposes. There is no station building, none being required either for travel or commerce.

(Note.—The railroad has been built about 1⅔ miles south of the 20-miles stake to "Delano," the present terminus of the Visalia division of the Southern Pacific Railroad, where other buildings, fixtures, tracks, etc., have been finished and are now in actual use and operation in connection with this 20-mile section. They are as follows: A passenger and freight house, same as at Tipton; a turntable, with 450 feet of track; a water tank of 53,000 gallons' capacity, supplied from a well by a "Knowles steam pump"; sidetrack 2,085 feet long, connected at both ends with good switches to the main track; a stock cattle-pen.)

That there are no locomotive stalls or engine-houses, those constructed at Tulare and other points on the road already reported upon being amply sufficient to meet its present requirements.

That no machine or repair shops have been built, those constructed at other points on the road and heretofore reported upon being amply sufficient to meet its present requirements. We are informed by the officers of the company that it is the intention, as soon as sufficient of the railroad shall be built from which to form a new and independent operating division of any considerable length, to construct permanent machine and repair shops in the most durable and substantial manner, and if in the

meanwhile additional facilities should be required for repairs or otherwise, arrangements are perfected to have them done, whenever needed, at the machine and repair shops of the San Joaquin Valley branch of the Central Pacific Railroad, which connects at Goshen with this railroad and telegraph line.

The Southern Pacific Railroad Company owns the following rolling stock, which is used on the entire line of its railroad, and is amply sufficient to accommodate present travel and commerce. We are in this also assured by the officers of the company that whenever other rolling stock shall be required it will be bought immediately.

Locomotives.

No.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
	Ft. In.	Inches.	Tons.	
1	4...6	12 x 15	15	Danforth, Cooke & Co.
2	5...	14 x 22	25	Norris.
3	5...	14 x 22	25	"
4	5...	14 x 22	26	Danforth, Cooke & Co.
5	5...	14 x 22	26	" " "
6	5...	16 x 24	32	Booth & Co.
7	5...	16 x 24	32	"
8	4...	14 x 18	18	"
9	5...6	17 x 22	32	Danforth, Cooke & Co.
10	5...	18 x 24	34	Danforth, Cooke & Co.
11	5...6	15 x 24	30	Mason.
12	5...6	15 x 24	31	McKay & Aldus.
13	5...	16 x 22	31	Norris.
14	4...6	15 x 22	29	Danforth, Cooke & Co.
15	5...	15 x 24	30	McKay & Aldus.
16	5...	16 x 22	31	" " "
17	5...	14 x 24	29	Norris.
18	4...6	15 x 22	29	Rhode Island.
19	4...6	15 x 22	29	McQueen.

Donkey...3

Cars.

20 Passenger cars, first class.
1 Passenger and baggage car.
3 Smoking cars.
8 Baggage cars, two of which are used for caboose cars.
2 Caboose cars.
1 Directors' car.
1 Hunting car.
1 Pay car.
1 Boarding car.
12 Dump cars.
17 Cattle cars.
58 Box cars.
130 Combination cars, for goods or cattle.
89 Flat cars.
1 Flat car (with pile-driver on).
1 Flat car (with donkey engine on).
23 Hand cars.
27 Push cars.

Total, 396 cars.

That said twenty miles of railroad and telegraph line are constructed, as near as may be, on the line specified in the "joint resolution" concerning the Southern Pacific Railroad of California, approved June 28, 1870, towit, "on the route indicated by the map filed by the Southern Pacific Railroad Company in the department of the interior on the third of January, 1867."

That said section of railroad and telegraph line, or any part thereof, has not been constructed "on the line of any

other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That this section of railroad and telegraph line was completed and equipped on the thirtieth day of June, 1873, and that both are first class.

That the telegraph line is constructed as follows: Not less than 30 redwood poles to the mile; size at bottom, 8 x 8 inches; at top, 4 x 5 inches; length, 24 feet. They are set to a depth of 4 feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

Respectfully submitted.

LEWIS M. FOULKE.
CALVIN BROWN,
EUGENE L. SULLIVAN,
United States Railroad Commissioners.

State of California,
City and County of San Francisco. } ss.

Lewis M. Foulke, Calvin Brown, and Eugene L. Sullivan, being duly sworn severally, each for himself says that he is United States railroad commissioner, and that the matters and things set forth in the foregoing statement by him *in-b*scribed are true and correct.

LEWIS M. FOULKE.
CALVIN BROWN.
EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Robert F. Morrison, judge of the District Court of the Fourth Judicial District of the State of California, in and for the city and county of San Francisco, this twenty-third day of July, A. D. 1873, said Court being a Court of record.

ROBERT F. MORRISON,
District Judge of the Court aforesaid.

I hereby certify that Robert F. Morrison is the acting judge of said court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said Court this twenty-third day of July, A. D. 1873.

WILLIAM HARNEY,
County Clerk of the City and County of San Francisco, California, and ex officio Clerk of the Court aforesaid.

[Seal District Court of California, San Francisco County.]

Letter of the Secretary.

Department of the Interior, Lands and Railroads.

Aug. 8, 1873.

T. F. D. Department of the Interior.

Washington, D. C., 5th August, 1873.

Sir: I have the honor to submit herewith for your action the report, dated twenty-third ult., of Messrs. Foulke, Brown, and Sullivan, appointed by you to examine and report upon the fourth section of twenty miles of the road and telegraph line of the Southern Pacific Railroad Company, "commencing at a point at the end

of the twentieth mile on the line of said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley branch of the Central Pacific Railroad (said point of commencement being in the northwest quarter of section 30, township 21 south, range 25 east, Mount Diablo base and meridian), running thence in a southeasterly direction and ending at the termination of the twentieth mile therefrom, in the northwest quarter of section two, township 25 south, range 25 east, Mount Diablo base and meridian."

The commissioners in their report represent (with a few defects which the co— promise to hereafter remedy) that this section of road is completed and equipped as a first-class railroad, and that the telegraph line is finished for the same distance and is first class. I therefore respectfully recommend the acceptance of the same and the issue to said company of patents for lands due on account of the construction thereof agreeably to the provisions of the act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved twenty-seventh of July, 1866, and the acts amendatory thereof, approved twenty-fifth of July, 1868, and twenty-eighth of June, 1870.

Very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

To the President.

[Endorsement]: Southern Pacific. Department of the interior. Fifth of August, 1873. B. R. Cowen, acting secretary.

Submits to the President report of commissioners on the fourth section (20 miles) of Southern Pacific Railroad.

Approval by the President.

Executive Mansion, August 6, 1873.

The within recommendations are approved.

U. S. GRANT.

Commissioner G. L. O. and C. P. Huntington notified ninth of August, 1873.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 269. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, clerk.

United States of America,
Southern District of California, } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 269 in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,

[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 271.

Certificate.

A. M.

J. T. S.

H. H. B.

United States of America.

Department of the Interior.

Washington, D. C., July 30, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,

Acting Secretary of the Interior.

E. W.

[Seal of Department of the Interior.]

Letter of Instructions.

Department of the Interior.

Washington, D. C., 2 July, 1874.

Gentlemen:

The President of the Southern Pacific Railroad Com-

pany, in a recent letter, requests that commissioners be instructed to examine an additional section of 20 miles of said road, commencing at a point at the end of the fortieth mile from its intersection with the San Joaquin Valley Branch of the Central Pacific Railroad, and ending at the termination of the twentieth mile therefrom, in the northeast ¼, section 9, township 28 south range 26 east, Mt. Diablo base and meridian.

You will, as soon as convenient, be pleased to proceed to the examination of this portion of road, under departmental instructions of the twenty-eighth of April, 1871, and the seventeenth of February, 1874.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

L. M. Foulke, Esq.,
San Francisco, Cal.
Eugene L. Sullivan, Esq.,
Do. Do. &
Calvin Brown, Esq.
Mare Island, Cal.
Commissioners on the Southern Pacific Railroad.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 271. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 271 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 272.

REPORT OF COMMISSIONERS.

Certificate.

J. I. P. A. M.
United States of America. M. C. McN.
Department of the Interior. P. M. S.
Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, with endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting Secretary of the Interior.

[Seal of Department of Interior] E. W.

Report.

San Francisco, California,
September 19, 1874.

To Hon. C. Delano, Secretary of Interior of the United States of America.

Sir: We, the undersigned, commissioners of the United States appointed to examine the fifth (5th) section of twenty (20) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, commencing at a point at the end of the fortieth (40th) mile on the line of said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley Branch of the Central Pacific Railroad (said point of commencement being in the northwest quarter (N. W. ¼) of section two (2), township twenty-five (25) south, range twenty-five (25) east, Mount Diablo base and meridian), running thence in a southeasterly direction and ending at the termination of the twentieth (20th) mile therefrom, in the northeast quarter (N. E. ¼) of section nine (9), township twenty-eight (28) south, range twenty-six (26) east, Mount Diablo base and meridian,

certify:

That we have carefully examined such section, and that the alignment and grades are as represented on the ac-

companying map and profile, and are such as, in view of the capabilities of the ground, the government should accept as first class.

That in this distance (20 miles) there are:

4,386 feet of level line.
18,800 feet of grades, 0 to 5 feet per mile.
23,700 feet of grades, 5 to 10 feet per mile.
41,900 feet of grades, 10 to 15 feet per mile.
16,814 feet of grades, 15 to 18.48 feet per mile

Total length, 105,600 feet, or 20 miles.

Maximum grade, 18 48-100 feet per mile.

That also in this distance of 20 miles there are:

92,400 feet of straight line.
13,200 feet of curve, 0° 14′.

Total length of 105,600 feet or twenty miles, tangents and curve.

The radius of the curve is 24,555 feet.

That all the iron is of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the rails weigh not less than fifty-six (56) pounds per lineal yard, and the joints are made with fish-plates, and that all the rails are fastened with four spikes to each tie.

That there are three sidings, as follows:

One at Delano, connected at both ends with main track with good switches ..... 3,285 ft.
One at Delano, with turntable, connected with main track with a good switch..... 313 ft.
One at a point 11 8-10 miles south of Delano, with good switches at both ends..... 1,100 ft.

Total length of side-track ..... 4,698 ft.

That there are 2,450 ties per mile of redwood or red cedar timber, in all cases at least 6 by 8 inches by 8 feet long.

(The cross-ties are in the aggregate over eight inches wide and make a bearing surface equal to at least 2,640 ties per mile.)

That the said section is ballasted with a superior quality of sand, sandy loam, and gravel, of which the road-bed is composed, no better material being found within very many miles of the line of the railroad.

That the excavations and the embankments are in strict conformity to the requirements of law and the instructions.

That there is one trestle bridge 416 feet long, having 26 spans of 16 feet each, on pile foundation, crossing Poso creek.

That there are seven (7) culverts, as follows:

1 Box culvert, 1½ x 2 feet, of redwood.
3 " " 2 x 2 " " "
3 " " 2 x 3 " " "

7 culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad. The material used in the construction of the trestle bridge, the culverts, and bridge abutments is the most durable the country can afford, being the black coast redwood or red cedar (the same used for ties), well known on the Pacific coast and universally sought after on account of its great durability and resistance of decay.

We have the assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone when and as the same becomes necessary and suitable material can be found within a reasonable distance of the line of the road.

At Delano there is one water tank of 53,000 gallons capacity, supplied from a well by a "Knowles steam pump."

That there are no wood or coal houses, none being required. Fuel for locomotives is taken at fuel stations on the road outside of this twenty-mile section, which were heretofore reported upon. If fuel-houses shall be found necessary, the officers promise that they shall be built immediately.

That there are four section-houses at Delano, sizes—24 feet x 30 feet, 25 x 15 feet, 15 x 15 feet, and 12 x 12 feet.

That at Delano there is one passenger and freight house combined, 32 x 150 feet, sided with planed lumber, painted, and covered with shingles. On each side of the building there are platforms ten (10) feet wide.

That there is one turntable at Delano, with 313 feet of track; also one large cattle-pen.

(Note.—At Lerdo, 1 3-10 miles south from the end of this section, there is a siding 1,289 feet long, connected with the main track by means of good switches at both ends.

Workmen are now engaged in completing the road south 13 7-10 miles from the end of this section to Bakersfield, and it will soon be in operation to this point. The company will make here a regular station, as well as a temporary terminus, and with this intention is now building there a passenger and freight house combined, together with necessary locomotive stalls, turntables, sidetracks, water tanks, platforms, cattle-pens, coal platforms, &c., &c.)

That there are no locomotive stalls or engine-houses, those constructed at Tulare and other points on the road already reported upon being amply sufficient to meet its present requirements.

That no machine or repair shops have been built, those at other points upon the road and heretofore reported upon being amply sufficient to meet its present requirements. We are informed by the officers of the company that it is the intention, as soon as sufficient of the railroad shall be built from which to form a new and independent operating division of any considerable length, to construct permanent machine and repair shops in the most durable and substantial manner, and if in the meanwhile additional facilities shall be required for repairs or otherwise arrangements are perfected to have them made, when and as they may be needed, at the machine and repair shops of the San Joaquin Valley Branch of the

Central Pacific Railroad, which connects at Goshen with this railroad and telegraph line.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are used on the entire line of its railroad, viz:

Locomotives.

No.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
	Ft. In.	In. In.	Tons.	
1	4 6	12 x 15	15	Danforth, Cook & Co.
2	5 0	14 x 22	25	Norris.
3	5 0	14 x 22	25	do.
4	5 0	14 x 22	26	Danforth, Cook & Co.
5	5 0	14 x 22	26	do. do.
6	5 0	16 x 24	32	Booth & Co.
7	5 0	16 x 24	32	do.
8	4 0	14 x 18	18	do.
9	5 6	17 x 22	32	Danforth, Cook & Co.
10	5 0	18 x 24	34	do. do.
11	5 6	15 x 24	30	Mason.
12	5 6	15 x 24	31	McKay & Aldus.
13	5 0	16 x 22	31	Norris.
14	4 6	15 x 22	29	Danforth, Cook & Co.
15	5 0	15 x 24	30	McKay & Aldus.
16	5 0	16 x 22	31	do. do.
17	5 0	14 x 24	29	Norris.
18	4 6	15 x 22	29	Rhode Island.
19	4 6	15 x 22	29	McQueen.
20	5 1½	16 x 24	32	
Donkey	3 0			

Cars.

20 Passenger cars, first class.
1 Passenger and baggage cars, first class.
3 Smoking cars, first class.
8 Baggage cars, two of which are used for caboose cars.
2 Caboose "
1 Directors' "
1 Hunting "
1 Pay "
1 Boarding "
12 Dump "
17 Cattle "
208 Box "
91 Flat "
23 Hand "
27 Push "

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416 cars.

The above locomotives and cars are amply sufficient to accommodate present commerce and travel, as this section of twenty miles runs through an unsettled and undeveloped country, affording but little, if any, present additional business to the road. The officers of the company say that when other rolling stock shall be required it will be immediately procured.

That said twenty miles of railroad and telegraph line are constructed as near as may be on the line specified in the "joint resolution" concerning the Southern Pacific Railroad of California, approved June 28, 1870, towit, "On the route indicated by the map filed by the Southern Pacific Railroad Company in the department of the interior on the third of January, 1867."

That said section of railroad and telegraph line or any part thereof has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That this section of railroad and telegraph line was completed and equipped on the thirteenth day of June, 1874, and that both are first class.

That the telegraph line is constructed as follows: Not less than 30 redwood poles to the mile; size at bottom, 8 x 8 inches; at top, 4 x 5 inches; length, 24 feet; they are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

Respectfully submitted.

LEWIS M. FOULKE,
CALVIN BROWN,
EUGENE L. SULLIVAN,
United States Railroad Commissioners.

City and County of San Francisco, } ss.
State of California. }

Lewis M. Foulke, Calvin Brown, and Eugene L. Sullivan, being duly sworn severally, each for himself says that he is United States railroad commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

LEWIS M. FOULKE.
CALVIN BROWN.
EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Ogden Hoffman, Judge of the United States District Court for California. this nineteenth day of September, A. D. 1874, said Court being a court of record.

OGDEN HOFFMAN,

Judge of the United States District Court for California.

I hereby certify that Ogden Hoffman is the acting judge of said Court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said Court this nineteenth day of September, 1874.

EDWARD B. COTTER,

Clerk United States District Court, District of California.

[Seal of the United States District Court, District of California.]

Letter of the Secretary.

Lands and Railroads.

Z. B. S. Department of the Interior.

Washington, D. C., October 9, 1874.

Sir: I have the honor to submit for your action the report date nineteenth ult., of Messrs. Foulke, Brown, and Sullivan, appointed by you to examine and report upon the Southern Pacific Railroad & Telegraph line. They have examined an additional section of twenty miles "commencing at a point at the end of the fortieth mile on the line of said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley

Branch of the Central Pacific Railroad, running thence in a southeasterly direction, and ending at the termination of the twentieth mile therefrom."

The commissioners in their report represent that this portion of road is completed and equipped as a first-class railroad, and that the telegraph is finished for the same distance and is first class. I therefore respectfully recommend the acceptance of the same and the issue to said company of patents for lands due on account of the construction thereof, agreeably to the provisions of the "Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved July 27, 1866, and the acts amendatory thereof, approved July 25, 1868, and June 28, 1870.

Very respectfully, your obedient servant,

B. R. COWEN,

Acting secretary.

The President.

[Endorsement]: Southern Pacific. Department of the interior. October 9, 1874. B. R. Cowen, acting secretary.

Submits to the President report of commissioners on twenty additional miles of Southern Pacific Railroad.

Approval by the President.

Executive Mansion, October 26, 1874.

The within recommendations are approved.

U. S. GRANT.

[Endorsement]: See letters to commissioner G. L. O. and Mr. Huntington, October 26, 1874.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 272. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

Southern District of California,
United States of America. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 272 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,

[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 274.

Certificate.

A. M.
J. T. S.
H. H. B.

United States of America.
Department of the Interior.
Washington, D. C., July 30, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JOHN M. REYNOLDS,
Acting secretary of the interior.

E. W.

[Seal of department of the interior.]

LETTER OF INSTRUCTIONS.

Department of the Interior.
Washington, D. C., June 23, 1875.

Gentlemen:

The president of the Southern Pacific Railroad Company, in a letter dated fourteenth instant, requests that commissioners be instructed to examine an additional section of twenty miles of said road, commencing "at a point at the end of the sixtieth mile, on the line of said railroad, south from the intersection of the Southern Pacific Railroad with the San Joaquin valley branch of the Central Pacific Railroad, said point of commencement be-

ing in the northeast one-quarter of section 9, township 28 south, range 26 east, Mount Diablo base and meridian, and running in a southeasterly direction ends at the termination of the twentieth mile therefrom, in the northeast one-quarter of section 5, township 30 south, range 29 east, Mount Diablo base and meridian."

You will, as soon as convenient, be pleased to proceed to the examination of this portion of road, under departmental instructions of 28th April, 1871, and 17th February, 1874.

Very respectfully,

C. DELANO,
Secretary.

L. M. Foulke, Esq.,
San Francisco, Cal.;
Eugene L. Sullivan, Esq.,
San Francisco, Cal.;
Calvin Brown, Esq.,
Mare Island, Cal.,
Commissioners on the Southern Pacific Railroad.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 274. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do

hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 274 in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE.
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 275.

REPORT OF COMMISSIONERS.

Certificate.

J. I. P.

A. M.
M. C. McN.
P. M. S.

United States of America.
Department of the Interior.
Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the

originals, with endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JOHN M. REYNOLDS,
Acting secretary of the interior.

E. W.

[Seal of department of interior.]

Report.

San Francisco, California, August 3, 1875.

To Hon. C. Delano, secretary of interior of the United States of America:

Sir: We, the undersigned, commissioners of the United States appointed to examine the sixth (6th) section of twenty (20) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, commencing at a point at the end of the sixtieth (60th) mile on the line of said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin valley branch of the Central Pacific Railroad (said point of commencement being in the northeast quarter (N. E. ¼) of section nine (9), township twenty-eight (28) south, range twenty-six (26) east, Mount Diablo base and meridian, running thence in a southeasterly direction and ending at the termination of the twentieth mile therefrom, in the northeast quarter (N. E. ¼) of section five (5), in township thirty (30) south, range twenty-nine (29) east, Mount Diablo base and meridian, certify: That we have carefully examined such section, and that the alignment and grades are as represent-

ed on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the government should accept as first class.

That in this distance (20 miles) there are:

14.414 5-10	feet of level line.
7.500	feet of grades, 0 to 5 ft. pr mile
29.800	feet of grades, 5 to 10 ft. pr mile
18.600	feet of grades 10 to 15 ft. pr mile
22.285 5-10	feet of grades, 15 to 20 ft. pr mile
1.500	feet of grades 20 to 25 ft. pr mile
1.500	feet of grades, 25 to 30 ft. pr mile
5.600	feet of grades, 35 to 40 ft. pr mile
3.400	feet of grades, 45 to 50 ft. pr mile
1.000	feet of grades, 55 to 60 ft. pr mile

Total lngth 105.600 feet, or 20 miles.
Maximum grade, 59.84 feet per mile.

That also in this distance of twenty (20) miles there are:

95.236 6-10	feet of straight line.
2.421 4-10	feet of curve, 0° 14′.
7.942	feet of curve, 0° 20′.

Total length of 105.600 feet, or twenty miles. Tangents and curves.
Minimum radius, 17.189 feet.

That all the iron is of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the rails weigh not less than fifty-six pounds per lineal yard, and the joints are made with fish-plates, and that all the rails

are fastened with four spikes to each tie; that there are four sidings, having an aggregate length of 5,784½ feet, as follows, all being connected at both ends with main track with good switches, viz:

One at "Lerdo," 1.289 feet
One at "Sumner," 1.379 feet
One at "Sumner," 1.505½ feet
One at "Sumner," 1.611 feet

Total, 5.784½ feet of side track.

That there is one turntable track at Sumner 542½ feet long, connected with the main track by means of a good switch; that there are 2,430 ties per mile, of redwood or red-cedar timber, in all cases at least six by eight inches by eight feet long. (The cross-ties are in the aggregate over eight inches wide and make a bearing surface equal to at least 2,640 ties per mile.)

That said section is ballasted with a superior quality of sand, sandy loam, and gravel, of which the roadbed is composed, no better material being found within very many miles of the line of the railroad.

That the excavations and embankments are in strict conformity to the requirements of the law and the instructions.

That there are ten (10) bridges, as follows, viz:

One bridge across Kern river, consisting of fourteen spans, of straining beam truss of sixty feet each, resting on timber pile piers, with pile bridge approaches, (composed of one hundred and twenty spans of sixteen feet each) and having an aggregate length of 2,760 feet and being in every respect a first-class structure.

	Length.	No. of spans.	Width of span.
1 pile bridge.....	96 feet	6	16 feet
1 pile bridge.....	80 feet	5	16 feet
2 pile bridges.....	64 feet	4	16 feet
2 pile bridges.....	48 feet	3	16 feet
1 pile bridge.....	16 feet	1	16 feet
2 pile bridges.....	14 feet	1	14 feet

Total, 9 pile bridges.

That there are fifteen (15) culverts, as follows, viz

	ft.		ft.	
2 box culverts,	1	x	1	, of redwood
1 box culvert,	1	x	1½	, of redwood
4 box culverts,	1½	x	1½	, of redwood
1 box culvert,	1½	x	2	, of redwood
7 box culverts,	2	x	2	, of redwood

15 box culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad.

The material used in the construction of bridges, culverts, and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well known on the Pacific Coast and universally sought after on account of its great durability and resistance to decay.

We have the assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone when and as the same may become necessary, and suitable material can be found within a reasonable distance of the line of the road.

At Sumner there is one water tank of 18,000 gallons' capacity, supplied from a well by a "Knowles steam pump."

That there are no wood or coal houses, none being required, the fuel for locomotives being taken on at points on the road outside of this twenty-mile section, and heretofore reported upon. If fuel-houses shall be found necessary, the officers promise that they shall be built immediately.

That there are section-houses for the accommodation of employees as follows, viz:

One at "Lerdo," size, 12 x 14; one 14 x 24; one 12 x 12, and one 12 x 14, for tools.

One at "Sumner," size, 14 x 24; one 12 x 12; one 14 x 24, for tools.

That for the accommodation of passenger and freight business there is a station building at Sumner (near Bakersfield) consisting of a passenger and freight-house combined, 138 feet by 32 feet, sided with planed lumber, painted, and covered with shingles. On three sides of the building there are platforms ten feet wide. On the fourth side the platform is twelve feet wide.

That there is at Sumner one large cattle-pen and a coal platform 214 feet long, with an average width of 20 feet.

That there are no locomotive stalls or engine-houses on this section, those constructed at Tulare and other points on the road already reported upon being amply sufficient to meet its present requirements. (At the date of our last report—September 19, 1874—it was contemplated to make Sumner a temporary terminal point and

to erect locomotive stalls there, but the railroad having been extended a long way beyond, and the temporary terminus changed, and stalls not being necessary there at present, the railroad company deemed it best to postpone the building of them until they should be needed.)

That no machine or repair shops have been built, those at other points upon the road and heretofore reported upon being amply sufficient to meet its present requirements. We are informed by the officers of the company that it is the intention, as soon as sufficient of the railroad in this section of country shall be built from which to form a new and independent operating division of any considerable length, to construct permanent machine and repair shops in the most durable and substantial manner; and if in the meanwhile additional facilities shall be required for repairs or otherwise, arrangements are perfected to have them made, when and as they may be needed, at the machine and repair shops of the San Joaquin valley branch of the Central Pacific Railroad, which connects at Goshen with this railroad and telegraph line.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are used on the entire line of its railroad, viz:

Locomotives.

No.	Name.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
		Inches.		Tons.	
1	Huntington.....	54	11 x 15	16	Danforth, Cooke & Co.
2	San Francisco.....	60	14 x 22	25	Norris.
3	Pacific	60	14 x 22	25	"
4	Comanche.....	60	14 x 22	26	Danforth, Cooke & Co.
5	San Mateo.....	60	14 x 22	26	" "
6	California	60	16 x 24	32	Booth & Co.
7	Atlantic.....	60	16 x 24	32	" "
8	Union	48	14 x 18	18	" "
9	James Donahue....	66	17 x 22	32	Danforth, Cooke & Co.
10	H. M. Newhall	54	18 x 24	34	" "
11	Menlo Park.....	66	15 x 24	30	Wm. Mason.
12	Racer.....	60	15 x 24	31	McKay & Aldus.
13	Shoshone.....	60	16 x 22	31	Norris.
14	Red Eagle	60	15 x 22	29	Danforth-Cooke & Co.
15	Ranger	60	15 x 24	31	McKay & Aldus.
16	Black Deer.....	60	16 x 22	31	" "
17	Oronoco	60	14 x 24	28	Norris.
18	Peeler	54	15 x 22	29	Rhode Island.
20	....	60	16 x 24	34½	Baldwin.
23	....	60	16 x 24	32	Schenectady.
24	....	60	16 x 24	32	"

Cars.

27 passenger cars.
3 smoking cars.
1 passenger and baggage car.
6 baggage cars.
1 officers' car.
1 pay car.
1 hunting car.
199 box cars.
91 flat cars.
14 stock cars.
4 caboose cars
1 boarding car.
12 dump cars
1 wood car (4-wheel car).
9 stone cars (4-wheel cars).
25 hand cars.
31 push cars.

The above locomotives and cars are amply sufficient to accommodate present travel and commerce, as this section of twenty miles runs through a country almost unsettled and undeveloped (except at the small village of Bakersfield), affording but little, if any, present additional business to the road. The officers of the company say that when other rolling stock shall be required it will be immediately procured.

That said twenty miles of railroad and telegraph line are constructed, as near as may be, on the line specified in the "joint resolution" concerning the Southern Pacific Railroad of California, approved June 28, 1870, towit, "on

the route indicated by the map filed by the Southern Pacific Railroad Company in the department of the interior on the third of January, 1867."

That said section of railroad and telegraph line or any part thereof has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That this section of railroad and telegraph line was completed and equipped on the tenth day of June, 1875, and that both are first class.

That the telegraph line is constructed as follows: Not less than thirty redwood poles to the mile; size at bottom, 8 x 8 inches; at top, 4 x 5 inches; length, 24 feet. They are set to a depth of four feet in the ground. Number nine galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best mainufacturers.

Respectfully submitted,

LEWIS M. FOULKE,

CALVIN BROWN,

EUGENE L. SULLIVAN,

United States railroad commissioners.

State of California,
City and County of San Francisco. } ss.

Lewis M. Foulke, Calvin Brown, and Eugene L. Sullivan, being duly sworn, severally, each for himself says that he is United States railroad commissioner, and that

the matters and things set forth in the foregoing statement by him subscribed are true and correct.

LEWIS M. FOULKE.
CALVIN BROWN.
EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Robert F. Morrison, Judge of the District Court of the Fourth Judicial District, in and for the city and county of San Francisco, California, this third (3) day of August, 1875, said Court being a court of record.

R. F. MORRISON,
District Judge of the Fourth Judicial District Court of the State of California.

I hereby certify that R. F. Morrison is the acting Judge of said Court; that I am well acquainted with his handwriting and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said Court this third day of August, A. D. 1875.

WILLIAM HARNEY,
County Clerk San Francisco, California, and Clerk Fourth District Court thereof.

[Seal District Court of California, San Francisco county.]

Letter of the Secretary.

Land and R. R.

Department of the Interior.

Washington, 21st August, 1875.

Sir: I have the honor to submit herewith for your consideration and, if deemed proper, for your approval, the

report, under date of the third instant, of Messrs. Lewis M. Foulke, Calvin Brown, and Eugene L. Sullivan, commissioners appointed by you to examine the Southern Pacific Railroad and telegraph line of California.

They have examined an additional section of twenty miles (the sixth), commencing in the northeast one-quarter, section 9, township 28 south, range 26 east, Mount Diablo base and meridian, running thence in a southeasterly direction and ending in the northeast one-quarter section 5, township 30 south, range 29 east, same base and meridian.

They report this section of the road completed and equipped as a first-class railroad, and the telegraph as also completed and first class. I therefore respectfully recommend the acceptance of said sixth section and the issue to the company constructing it of patents for lands due on account of such construction, agreeably to the provisions of the act approved 27 July, 1866 (14 Stat., 299), and the amendatory acts of 25 July, 1868 (15 Stat., 187), and 28th June, 1870 (16 Stat., 382).

I am, sir,

Very respectfully,

Your obedient servant,

B. R. COWEN,

Acting secretary.

The President.

[Endorsement]: Southern Pacific. The acting secretary of the interior. 21 Aug., 1875.

Submits for approval report of commissioners on the *sixth* one section, twenty miles, of the Southern Pacific Railroad of California.

Approval by the President.

Executive Mansion, August 23, 1875.

The within recommendations are approved.

U. S. GRANT.

Department of the interior, Aug. 24, 1875.

[Endorsement]: 160.26
20
180.26

160.26
20
180.26

See to G. L. O. and C. P. Huntington of 25th.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 275. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 275, in the case entitled The United States of America, complainants vs. The Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 277.

Certificate.

A. M.
J. T. S.
H. H. B.

United States of America.
Department of the Interior.
Washington, D. C., July 30, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JOHN M. REYNOLDS,
Acting secretary of the interior.
E. W.

[Seal of department of the interior.]

LETTER OF INSTRUCTIONS.

Department of the Interior.
Washington, D. C., 24th February, 1876.

Gentlemen:

The president of the Southern Pacific Railroad Company, in a letter dated eleventh instant, requests that commissioners to be instructed to examine an additional section of twenty miles of said road, commencing "at a point at the end of the eightieth mile on the line of said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin valley branch of the Central Pacific Railroad (said point of commencement being in the northeast one-quarter of section 5, township 30 south, range 29 east, Mount Diablo base and meridian), and running in a southeasterly direction ends at the termination of the twentieth mile therefrom, at a point in the southeast one-quarter of section 33, township 30 south, range 31 east, Mount Diablo base and meridian."

You will, as soon as convenient, be pleased to proceed to the examination of this portion of road, under departmental instructions of 28th April, 1871, and 17th February, 1874.

Very respectfully,

Z. CHANDLER,
Secretary.

L. M. Foulke, Esq.,
San Francisco, Cal.;
Eugene L. Sullivan, Esq.,
San Francisco, Cal.;
Calvin Brown, Esq.,
Mare Island, Cal.,
Commissioners on the Southern Pacific Railroad.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 277. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 277 in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this eighth day of May A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 278.

REPORT OF COMMISSIONERS.

Certificate.

J. I. P. A. M.
M. C. McN.
P. M. S.

United States of America,
Department of the Interior.
Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, with endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting Secretary of the Interior.

E. W.

[Seal of Department
of Interior.]

Report.

Department of the Interior,
June 13, 1876.

San Francisco, California,
May 27, 1876.

To Hon. Zachariah Chandler, Secretary of the Interior of the United States of America:

Sir: We, the undersigned, commissioners of the United States appointed to examine the seventh (7th) section of

twenty (20) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, commencing at a point at the end of the eightieth (80th) mile on the line of the said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley branch of the Central Pacific Railroad (said point of commencement being in the northeast one-quarter (N.-E. ¼) of section five (5), township thirty (30) south, range twenty-nine (29) east, Mount Diablo base and meridian), running thence in a southeasterly direction and ending at the termination of the twentieth (20th) mile therefrom, in the southeast one-quarter (S.-E. ¼) of section thirty-three (33), township thirty (30) south, range thirty-one (31) east, Mount Diablo base and meridian, certify that we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map of profile, and are such as, in view of the capabilities of the ground, the Government should accept as first-class.

That in this distance (20 miles) there are:

4,718.5	feet	of	level	line.					
600	"	"	grades,	5	to	10	feet	per	mile.
2,000	"	"	"	20	to	25	"	"	"
600	"	"	"	25	to	30	"	"	"
12,990	"	"	"	35	to	40	"	"	"
10,400	"	"	"	40	to	45	"	"	"
4,400	"	"	"	45	to	50	"	"	"
5,300	"	"	"	50	to	55	"	"	"
10,000	"	"	"	55	to	60	"	"	"
10,000	"	"	"	60	to	65	"	"	"
11,300	"	"	"	65	to	70	"	"	"
1,100	"	"	"	70	to	75	"	"	"
7,400	"	"	"	75	to	80	"	"	"
2,881.4	"	"	"	80	to	85	"	"	"
3,586.7	"	"	"	90	to	95	"	"	"
11,848.2	"	"	"	105	to	110	"	"	"
3,811.6	"	"	"	110	to	115	"	"	"
2,663.6	"	"	"	115	to	116 16-100	"	"	"

105,600 feet, or twenty miles.

Maximum grade, 116 16-100 feet per mile.

That also in this distance, twenty (20) miles, there are:

65,903.4 feet of straight line.
700.0 feet of curve, 0 deg. 10 min.
1,866.7 feet of curve, 0 deg. 15 min.
4,566.5 feet of curve, 0 deg. 20 min.
1,070.0 feet of curve, 0 deg. 25 min.
420 feet of curve, 0 deg. 30 min.
1,185.5 feet of curve, 1 deg. 30 min.
1,880.2 feet of curve, 1 deg. 50 min.
1,140.7 feet of curve, 2 deg. 30 min.
1,946.3 feet of curve, 3 deg. 00 min.
3,166.4 feet of curve, 4 deg. 00 min.
2,298.1 feet of curve, 4 deg. 30 min.
911.5 feet of curve, 5 deg. 30 min.
1,381.4 feet of curve, 6 deg. 00 min.
1,775.6 feet of curve, 6 deg. 30 min.
759.5 feet of curve, 8 deg. 00 min.
389.0 feet of curve, 9 deg. 00 min.
636.6 feet of curve, 9 deg. 00 min.
13,602.6 feet of curve,10 deg. 00 min.

105,600 feet, or twenty miles.

Minimum radius, 573 69-100 feet.

That of this distance, twenty (20) miles, there are 16.85 miles laid with iron rails and 3.15 miles with steel rails; that all the iron and steel are of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the iron rails weigh not less than fifty-six (56) pounds per lineal yard, and the steel rails weigh fifty (50) pounds per lineal yard; that all the joints are made with fish-plates,

and all the rails are fastened with four spikes to each tie; that there are five sidings, having an aggregate length of 6,227 feet, connected with the main track at each end with good switches, and one siding, 482 feet long, connected with the main track at one end with a good switch; that there is one turn-table track, 431½ feet long, connected with the main track with a good switch; that there is an average of 2,640 ties per mile, of redwood or red cedar timber, 6 by 8 inches by 8 feet long.

That said twenty-mile section is ballasted with a superior quality of sand and gravel, of which the road-bed is composed, no better material being found within very many miles of the line of the railroad.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are fifteen (15) bridges, as follows:

	Length.	No. of Spans.	Width of Span.
1 pile bridge....	144 feet.	9	16
3 pile bridges...	128 feet.	8	16
1 pile bridge....	127.6 feet.	8	16
1 pile bridge....	127.2 feet.	8	16
2 pile bridges...	126.4 feet.	8	16
2 pile bridges...	112 feet.	7	16
1 pile bridge....	110.6 feet.	7	16
1 pile bridge....	94.8 feet.	6	16
1 pile bridge....	65.5 feet.	4	16
With stone abutments.			
1 pile bridge....	47.4 feet.	3	16
1 pile bridge....	12 feet.	1	12

Total, 15 pile bridges.

That there are twenty (20) culverts, as follows.

1 box culvert, 1 x1½ ft., of redwood.
1 box culvert, 1 x2 2-12 ft., of redwood.
1 box culvert, 1½x2 ft., of redwood.
8 box culverts, 1½x2½ ft., of redwood.
2 box culverts, 2 x2 ft., of redwood.
4 box culverts, 2 x3 ft., of redwood.

—

Total, 17 box culverts, of timber.

1 box culvert, 2 x3 ft., of stone.
1 box culvert, 2½x3 ft., of stone.
1 culvert of stone, 4 ft. semi-circular arch, sides to springing of arch, 3 ft. high.

—

Total, 3 culverts of stone.

No stone suitable for building purposes could be found generally along the line of the road in places that were reasonably accessible. It would, in consequence of the rough and mountainous character of the country, require a haul by wagon of at least ten miles to get a proper quality of stone to the points on the road where it could have been used, although in some instances ledges of rock occurred where the distances in a direct line were much less. At one or two points enough of good stone was found with which to build three culverts and abutments for one bridge. The timber used in the construction of the bridges, culverts, and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well known

on the Pacific Coast and universally sought after on account of its great durability and resistance to decay.

We have the assurances of the managers and directors that the culverts and bridge abutments now constructed of timber will be rebuilt in stone when and as the same may become necessary and suitable materials can be found within a reasonable distance of the line of the road.

That in this section of twenty (20) miles there are two tunnels, having an aggregate length of 478 feet, viz:

Tunnel No. 1, situated 17¾ miles from the commencement of the section 245.8 feet in length, of which 62.2 feet are on a straight line and 179.6 feet on 10 deg. curve.

Tunnel No. 2, situated 18⅝ miles from the commencement of the section, 232.2 feet in length, all of which is on 10 deg. curve.

That these tunnels, being excavated through soft rock, required lining. They are well and substantially timbered throughout with the best quality of coast redwood or Puget Sound cedar, the arch ribs (10x14 inches) which support the sheeting being in no case more than five feet apart from center to center and being much nearer wherever the nature of the ground required it.

These tunnels inside the timbering have the following dimensions in the clear, viz:

Height from floor to soffit of arch	20 ft. 10 in.
Height from floor to springing line of arch	12 ft. 10 in.
Width at floor	14 ft. 00 in.
Width at springing line of arch	16 ft. 00 in.

That on 10 deg. curves the two latter dimensions are increased as follows, viz:

Width at floor .....15 ft. 00 in.
Width at springing line of arch.....17 ft. 00 in.

Suitable portals of timber, strongly framed, have been erected at the ends of each of the tunnels. Proper provision has also been made for the drainage of the tunnels.

At Pampa there is one water tank of 18,000 gallons' capacity, supplied from Walker's Basin creek by gravity.

Also, at Pampa, one siding 1,167 feet long, with good switches at each end.

At Caliente there is one water tank, 64,000 gallons' capacity, supplied from Tehachapi creek by gravity.

Also one siding, 5,060 feet long, with good switches at each end.

Also one siding 482 feet long, with a switch at one end only.

Also one turn-table, with 431½ feet of track.

That there are no wood or coal houses, none being required, the fuel for locomotives being taken on from a coal platform at Caliente, and also at other points on the road outside of this 20-mile section and heretofore reported upon. If fuel-houses shall be found necessary the officers promise that they shall be built immediately.

That there are section-houses for the accommodation of employés as follows:

One at Pampa, 16½ feet by 51 feet, and one hand-car house 14½x 20 feet, both built of rough lumber and covered with shingles.

One at Caliente, 20 feet by 29 feet, constructed of planed redwood and covered with shingles; also one 16 feet 5 inches by 30 feet 3 inches, with wing 13 feet by 16 feet 3 inches, sided with rough lumber and covered with shingles.

That for the accommodation of passenger and freight business there is a station building at Caliente, consisting of a passenger and freight house combined, 32 feet by 140 feet, made with planed lumber, painted, and covered with shingles. On three sides of the building there are platforms ten feet wide. On the fourth side the platform is 60 feet long and 52 feet wide.

That there are also at Caliente:

One shop for local repairs, 24½ feet by 30 feet, made with planed lumber, painted, and covered with shingles.

Two tool and hand-car houses, 10.5 feet by 14.4 feet, sided with rough lumber and covered with shingles.

One coal platform, 200 feet long, with a width of 24 feet, and having a wing 50 feet long, with an average width of 9½ feet.

That there are no locomotive stalls or engine-houses on this section, those constructed at Tulare and other points on the road, already reported upon, being amply sufficient to meet its present requirements.

That no machine or repair shops have been built, those at other points upon the road and heretofore reported upon being amply sufficient for the present requirements of this section. We are informed by the officers of the company that it is the intention, as soon as sufficient of the railroad in this section of country shall be built from

which to form a new and independent operating division of any considerable length, to construct permanent machine and repair shops in the most durable and substantial manner, and if in the meanwhile additional facilities shall be required for repairs or otherwise, arrangements are perfected to have them made, when and as they may be needed, at the machine and repair shops of the San Joaquin Valley branch of the Central Pacific Railroad. which connects at Goshen with this railroad and telegraph line.

The Southern Pacific Railroad Company owns the following locomotives and cars which are used on the entire line of its railroad which includes this 20-mile section, viz:

Locomotives.

No.	Name.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
		Inches.		Tons.	
1	Huntington.....	54	11 x 15	16	Danforth, Cooke & Co.
2	San Francisco.....	60	14 x 22	25	Norris.
3	Pacific	60	14 x 22	25	Norris.
4	Camanche.....	60	14 x 22	26	Danforth, Cooke & Co.
5	San Mateo.....	60	14 x 22	26	Danforth, Cooke & Co.
6	California.....	60	16 x 24	32	Booth & Co.
7	Atlantic.....	60	16 x 24	32	Booth & Co.
8	Union	48	14 x 18	18	Booth & Co.
9	James Donahue....	66	17 x 22	32	Danforth, Cooke & Co.
10	H. M. Newhall	54	18 x 24	34	Danforth, Cooke & Co.
11	Menlo Park.....	66	15 x 24	30	Wm. Mason.
12	Racer.....	60	15 x 24	31	McKay & Aldus.
13	Shoshone.....	60	16 x 22	31	Norris.
14	Red Eagle	60	15 x 22	29	Danforth, Cooke & Co.
15	Ranger	60	15 x 24	31	McKay & Aldus.
16	Black Deer	60	16 x 22	31	McKay & Aldus.
17	Orinoco	60	14 x 24	28	Norris.
18	Peeler	54	15 x 22	29	Rhode Island.
20	....	60	16 x 24	34½	Baldwin.
24	....	60	16 x 24	32	Schenectady.
26	....	60	17 x 24	32½	Schenectady.
27	....	60	17 x 24	32½	Schenectady.
28	....	60	17 x 24	32½	Schenectady.

Cars—

27 Passenger cars.
3 Smoking cars.
1 Passenger and baggage car.
6 Baggage cars.
1 Officers' car.
1 Pay car.
1 Hunting car.
199 Box cars.
141 Flat cars.
24 Stock cars.
4 Caboose cars.
1 Boarding car.
12 Dump cars.
9 Stone cars (4-wheel cars).
1 Wood car (4-wheel cars).
25 Hand cars.
31 Push cars.

The above locomotives and cars are amply sufficient to accommodate present commerce and travel, as this section of twenty miles runs through a country almost unsettled and undeveloped, affording but little, if any, present additional business to the road. The officers of the company say that when other rolling stock shall be required it will be immediately procured.

That said twenty miles of railroad and telegraph line are constructed, as near as may be, on the line specified in the "joint resolution" concerning the Southern Pacific Railroad of California, approved June 28, 1870, towit, on "the route indicated by the map filed by the Southern

Pacific Railroad Company in the department of the interior, on the 3d of January, 1867."

That said section of railroad and telegraph line, or any part thereof, has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore [prior to July 27, 1866] been granted by the United States."

That this section of railroad and telegraph line was completed and equipped on the thirteenth day of January, 1876, and that both are first-class.

That the telegraph line is constructed as follows: Not less than 30 redwood poles to the mile; size at bottom, 8x8 inches; at top, 4x5 inches; length, 24 feet. They are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

Respectfully submitted.

LEWIS M. FOULKE,
CALVIN BROWN,
EUGENE L. SULLIVAN,
United States Railroad Commissioners.

State of California,
City and County of San Francisco. } ss.

Lewis M. Foulke, Calvin Brown, and Eugene L. Sullivan, being duly sworn, severally, each for himself, says that he is United States Railroad Commissioner, and that

the matters and things set forth in the foregoing statement by him subscribed are true and correct.

LEWIS M. FOULKE,
CALVIN BROWN.
EUGENE L. SULLIVAN,

Subscribed and sworn to before me, Samuel H. Dwinelle, District Judge of the Fifteenth Judicial District Court of the State of California, this twenty-seventh day of May, 1876, said Court being a court of record.

SAMUEL H. DWINELLE,
District Judge Fifteenth Judicial District Court of California.

I hereby certify that Samuel H. Dwinelle is the acting Judge of said Court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court this twenty-seventh day of May, A. D. 1876.

THOMAS H. REYNOLDS,
County Clerk, San Francisco, California, and ex-officio clerk of District Court of Fifteenth Judicial District thereof.

[Seal District Court, San Francisco county, California.]

Washington, D. C., June 16, 1876.

Approved.

U. S. GRANT.

Letter of the Secretary.

Z. B. S.

Department of the Interior,

Washington, D. C., 14th June, 1876.

Sir: I have the honor to submit herewith for your consideration, and, if deemed proper, for your approval, the report, under date of the 27th ultimo, of Messrs. L. M. Foulke, Calvin Brown, and Eugene L. Sullivan, commissioners appointed by you to examine the Southern Pacific Railroad and telegraph line of California. They have examined an additional section of twenty miles (7th), beginning at a point at the end of the eightieth mile on the line of said railroad south from its intersection with the San Joaquin Valley branch of the Central Pacific Railroad (said point of beginning being in the northeast one-quarter of section 5, township 30 south, range 29 east, Mount Diablo base and meridian), running thence in a southeasterly direction and ending at the termination of the 20th mile therefrom in the southeast one-quarter of section 33, township 30 south, range 31 east, same base and meridian.

The commissioners report said section completed and equipped as a first-class railroad, and the telegraph line also completed and first-class. I therefore respectfully recommend the acceptance of said seventh section of twenty miles and the issuance to the company constructing it of patents for lands due on account of such construction, agreeably to the provisions of law.

Very respectfully,
Z. CHANDLER,
Secretary.

The President.

[Endorsement]: Southern Pacific Railroad, 2-790. Department of the Interior. June 14, 1876. Z. Chandler, Secretary.

Submits to the President report of commissioners on the seventh section, twenty miles, of Southern Pacific Railroad of California.

Approval by the President.
Executive Mansion, June 16, 1876.

The within recommendations are approved.
U. S. GRANT

Department of the
Interior.
June 17,
1876.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Defendant's Exhibit No. 278. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office

November 19, 1895, said original exhibit being described as Defendant's Exhibit No. 278 in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, Special Examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed:] Filed May 8, 1896. Wm. M. Van Dyke clerk.

Defendant's Exhibit No. 280.

Certificate.

A. M.
J. T. S.
H. H. B.

United States of America.
Department of the Interior.
Washington, D. C., July 30, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my

name, and caused the seal of the Department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior.

E. W.

[Seal of Department of the Interior.]

TELEGRAM OF INSTRUCTIONS.

Department of the Interior.

Washington, D. C., 28th December, 1876.

Telegram.

Messrs. L. M. Foulke, Calvin Brown, and Eugene L. Sullivan, Commissioners, San Francisco, California. Care of Southern Pacific Railroad Company.

Proceed to examine a section of Southern Pacific Railroad, beginning at Goshen, and running twenty miles westwardly.

Z. CHANDLER,
Secretary.

Collect.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 280. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States for the Southern District of California, do

hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 280, in the case entitled the United States of America, Complainants, vs the Southern Pacific Railroad Company et al., Defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal.]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 281.

REPORT OF COMMISSIONERS.

Certificate.

J. I. P. A. M.
M. C. MCN.
P. M. S.

United States of America.
Department of the Interior.
Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, with endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior.

E. W.

[Seal of Department of the Interior.]

Report.

San Francisco, California, January 2, 1877.

To Hon. Zachariarh Chandler, Secretary of Interior of the United States of America.

Sir:

We, the undersigned, commissioners of the United States, appointed to examine the eighth (8th) section of twenty (20) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, commencing at Goshen, at the initial point of section No. three (3) of the Southern Pacific Railroad, heretofore reported upon (said point of commencement being in the northwest quarter (N. W. ¼) of section nineteen (19), township eighteen (18) south, range twenty-four (24) east, Mount Diablo base and meridian), running thence in a westerly direction and ending at the termination of the twentieth (20th) mile therefrom in the northeast quarter (N. E. ¼) of section two (2), township nineteen (19) south, range twenty (20) east, Mount Diablo base and meridian,

Certify:

That we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of

the capabilities of the ground, the Government should accept as first class.

That in this distance of (twenty miles) there are—

47,000	ft. of level line.
17,900	ft. of grades, 0 to 5 ft. pr. mile.
21,200	ft. of grades, 5 to 10 ft. pr. mile.
10,485.5	ft. of grades, 10 to 15 ft. pr. mile.
7,514.5	ft. of grades, 15 to 20 ft. pr. mile.
1,500	ft. of grades, 20 to 20.41 ft. pr. mile.

Total length, 105,600 ft., or 20 miles.

Maximum grade, 20.41 feet per mile.

That also in this distance of twenty (20) miles there are—

99,093.5	ft. of straight line.
2,024.5	ft. of curve of 53 minutes.
3,692	ft. of curve of 1 degree.
790	ft. of curve of 2 degrees.

Total length, 105,600 ft., or 20 miles.

Minimum radius, 2,864.9 feet.

That this section of twenty (20) miles is laid with steel rails, all of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the rails weigh not less than fifty (50) pounds per lineal yard; that all the joints are made with fishplates, and all the rails are fastened with four spikes to each tie; that there is one siding having a length of fifteen hundred feet, connected with the main track at each end with a good switch; that there is an

average of two thousand six hundred and forty ties per mile, of redwood or red cedar timber, six by eight inches by eight feet long.

That said twenty-mile section is ballasted with a superior quality of sand and gravel, of which the roadbed is composed, no better material being found within very many miles of the line of the railroad.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are twenty-one (21) bridges, as follows:

	Length.	No. of Spans.	Width of Spans.
1 pile bridge....	272 feet	17	16 feet
1 pile bridge....	208 feet	13	16 feet
1 pile bridge....	112 feet	7	16 feet
2 pile bridges...	96 feet	6	16 feet
2 pile bridges...	64 feet	4	16 feet
2 pile bridges...	48 feet	3	16 feet
7 pile bridges...	32 feet	2	16 feet
5 pile bridges...	16 feet	1	16 feet

Total.....21 pile bridges.

That there are twenty-two (22) culverts, as follows:

1 eight-foot open culvert.
4 box culverts, 2 feet by 2 inches, of redwood.
13 box culverts, 2 feet by 3 inches, of redwood.
4 box culverts, 3 feet by 4 inches, of redwood.

Total.22 culverts.

No stone suitable for building purposes could be found within a distance of ten miles from the railroad.

The timber used for the construction of the bridges, culverts, and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well known on the Pacific Coast, and universally sought after on account of its great durability and resistance to decay.

We have the assurances of the managers and directors that the culverts and bridge abutments now constructed of timber, will be rebuilt in stone when and as the same may become necessary and suitable materials can be found within a reasonable distance of the line of the road.

That at Hanford there is one water tank of 18,000 gallons' capacity, supplied from a well by a pump.

That there are no wood or coal houses, none being required, the fuel for locomotives being taken on from coal platforms at other points on the road outside of this twenty-mile section, and heretofore reported upon. If fuelhouses shall be found necessary on this section, the officers promise that they shall be built immediately.

That sectionhouses are in course of erection, but are not yet completed.

That for the accommodation of passenger and freight business there is a station building at Hanford, consisting of a passenger and freight house combined, thirty-two feet by seventy-five feet, made with planed lumber, painted and covered with shingles, and having a platform ten feet wide on each side.

That there are no locomotive stalls or enginehouses on this section, those constructed at Tulare and other points on the road already reported upon being amply sufficient to meet its present requirements.

That no machine or repair shops have been built, those at other points upon the road and heretofore reported upon being amply sufficient for the present requirements of this section. We are informed by the officers of the company that if, in the meanwhile, additional facilities shall be required for repairs, or otherwise, arrangements are perfected to have them made, when and as the same made be needed, at the machine and repair shops of the San Joaquin Valley Branch of the Central Pacific Railroad, which connects at Goshen with this railroad and telegraph line.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are used on the entire line of its railroad, which includes this twenty-mile section, viz

Locomotives.

No.	Name.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
		Inches.		Tons.	
1	Huntington.....	54	11 x 15	16	Danforth, Cooke & Co.
2	San Francisco	60	14 x 22	25	Norris.
3	Pacific	60	14 x 22	25	Norris.
4	Comanche.....	60	14 x 22	26	Danforth, Cooke & Co.
5	San Mateo	60	14 x 22	26	Danforth, Cooke & Co.
6	California	60	16 x 24	32	Booth & Co.
7	Atlantic.....	60	16 x 24	32	Booth & Co.
8	Union.....	48	14 x 18	18	Booth & Co.
9	James Donahue....	66	17 x 22	32	Danforth, Cooke & Co.
10	H. M. Newhall.....	54	18 x 24	34	Danforth, Cooke & Co.
11	Menlo Park	66	15 x 24	30	Wm. Mason.
12	Racer.....	60	15 x 24	31	McKay & Aldus.
13	Shoshone.....	60	16 x 22	31	Norris.
14	Red Eagle.....	60	15 x 22	29	Danforth, Cooke & Co.
15	Ranger	60	15 x 24	31	McKay & Aldus.
16	Black Deer.....	60	16 x 22	31	McKay & Aldus.
17	Orinoco	60	14 x 24	28	Norris.
18	Peeler	54	15 x 22	29	McQueen, Schenectady.
19	.....	54	15 x 22	29	McQueen, Schenectady.
20	.....	60	16 x 24	34½	Baldwin.
21	.....	60	16 x 24	32	McQueen, Schenectady.
22	.....	60	16 x 24	32	McQueen, Schenectady.
23	.....	60	16 x 24	32	McQueen, Schenectady.
24	.....	60	16 x 24	32	Schenectady.

Locomotives—Continued.

No.	Name.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
		Inches.		Tons.	
25	....	60	16 x 24	32	Schenectady.
26	....	60	17 x 24	32½	Schenectady.
27	....	60	17 x 24	32½	Schenectady.
28	....	60	17 x 24	32½	Schenectady.
29	....	60	16 x 24	32	McQueen, Schenectady.
30	....	56	17 x 24	32	Central Pacific R. R. Co., Sacramento.
31	....	62	14 x 22	26	McQueen, Schenectady.
32	....	62	12 x 22	25	McQueen, Schenectady.
33	....	62	12 x 22	25	McQueen, Schenectady.
34	....	62	9 x 18	15	Vulcan Iron Works, San F. Co.
35	....	54	18 x 24	32½	McQueen, Schenectady.
36	....	54	18 x 24	32½	McQueen, Schenectady.
37	....	54	18 x 24	32½	McQueen, Schenectady.
38	....	54	18 x 24	32½	McQueen, Schenectady.
39	....	54	18 x 24	32½	McQueen, Schenectady.
40	.....	54	18 x 24	32½	McQueen, Schenectady.
41	....	54	18 x 24	32½	McQueen, Schenectady.
42	.....	54	18 x 24	32½	McQueen, Schenectady.
43	.....	54	18 x 24	32½	McQueen, Schenectady.
44	.....	54	18 x 24	32½	McQueen, Schenectady.

Cars.

34 passenger cars.
1 parlor car.
4 passenger and baggage cars.
6 smoking cars.
20 emigrant cars.
8 baggage cars.
1 officers' car.
1 pay car.
1 hunting car.
4 caboose cars.
1 boarding car.
117 box cars.
440 combination cars.
24 stock cars.
328 flat cars.
12 dump cars.
9 stone cars.
54 hand cars.
48 push cars.
2 wood cars.

The foregoing locomotives and cars are amply sufficient to accommodate present commerce and travel, as this section of twenty miles runs through a country thinly settled and undeveloped, affording but little, if any, present additional business to the road. The officers of the company say that when other rolling stock shall be required it will be immediately procured.

That said twenty miles of railroad and telegraph line are constructed, as near as may be, on the line specified

in the "joint resolution" concerning the "Southern Pacific Railroad of California," approved June 28, 1870, towit, On the route indicated by the map filed by the Southern Pacific Railroad Company in the department of the interior on the third day of January, 1867.

That said section of railroad and telegraph line, or any part thereof, has not been constructed "on the line of any other railroad route, to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That this section of railroad and telegraph line was completed and equipped on the eleventh day of December, 1876, and that both are first class.

That the telegraph line is constructed as follows: Not less than thirty redwood poles to the mile; size at bottom, eight by eight inches; at top, four by five inches; length, twenty-four feet. They are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

Respectfully submitted,
CALVIN BROWN,
LEWIS M. FOULKE,
EUGENE L. SULLIVAN,
United States railroad commissioners.

State of California,
City and County of San Francisco, } ss.

Lewis M. Foulke, Calvin Brown, and Eugene L. Sullivan, being duly sworn, severally, each for himself says

that he is United States railroad commissioner, and that the matters and things set forth in the foregoing state ment by him subscribed are true and correct.

CALVIN BROWN.
LEWIS M. FOULKE.
EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Robert F. Morrison, Judge of the District Court of the Fourth Judicial District, in and for the State of California, the same being a court of record.

As witness my hand and the seal of said Court this second day of January, A. D. 1877.

R. F. MORRISON,
District Judge.

I hereby certify that Robert F. Morrison is the acting Judge of said Court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said Court this second (2d) day of January, A. D. 1877.

THOMAS H. REYNOLDS,
County Clerk of the city and county of San Francisco, California, and ex-officio Clerk of the District Court of the Fourth Judicial District, California.

[District Court of California, San Francisco County.]

Letter of the Secretary.

Z. B. S.

Department of the Interior.
Washington, D. C., 22d January, 1877.

Sir:

I have the honor to submit herewith for your consider-

ation and, if deemed proper, for your approval, the report, under date of the second instant, of Messrs. L. M. Foulke, Calvin Brown, and Eugene L. Sullivan, commissioners appointed by you to examine the Southern Pacific Railroad and telegraph line of California. They have examined an additional section (eighth) of twenty miles, beginning at Goshen, at the initial point of section three of said road, heretofore reported on, in the northwest one-quarter of section 19, township 18 south, range 24 east, Mount Diablo base and meridian, running thence in a westerly direction, and ending at the termination of the twentieth mile in northeast one-quarter of section 2, township 19 south, range 20 east, same base and meridian.

The commissioners report said section as completed and equipped as a first-class railroad, and the telegraph line also as completed and first-class. I therefore respectfully recommend the acceptance of said eighth section of twenty miles, and the issuance to the company constructing it of patents for lands due on account of said construction, agreeably to the provisions of law.

I am, sir, very respectfully, your obt. servant,

Z. CHANDLER,
Secretary.

The President.

[Endorsement]: Southern Pacific. Department of the Interior. 22d January, 1877. Z. Chandler, Secretary.

Submits to the President report of commissioners on eighth section of twenty miles of Southern Pacific Railroad.

Approval by the President.

Executive Mansion, January 25, 1877.

The within recommendations are approved.

U. S. GRANT.

Department of the
Interior
Jan. 26, 1877.

[Endorsement]: Copy of this letter and map to general land office, with letter of January 26, 1877.

[Endorsed] United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 281. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America, }
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 281, in the case entitled the United States of America, Complainants, vs. the Southern Pacific Railroad Company et al., Defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 283.

Certificate.

A. M.
J. T. S.
H. H. B.

United States of America.
Department of the Interior.
Washington, D. C., July 30, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior.

E. W.

[Seal of Department of the Interior.]

TELEGRAM OF INSTRUCTIONS.

Department of the Interior.

Washington, D. C., 19th January. 1877.

Telegram.

Messrs. L. M. Foulke, Calvin Brown, and E. L. Sullivan, Commissioners. Care of Southern Pacific Railroad Company, San Francisco, California.

Proceed to the examination of ninth section of Southern Pacific Railroad, west of Goshen.

CHAS. T. GORHAM,

Acting secretary.

Collect.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 283. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 283, in the case entitled the United States of America, Complainants, vs. the Southern Pacific Railroad Company et al., Defendants, No. 600, before Leo Longley, special examiner and I certify that said

foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 284.

REPORT OF COMMISSIONERS.

Certificate.

J. I. P. A. M.

United States of America. M. C. McN.
P. M. S.

Department of the Interior.

Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, with endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior.

E. W.

[Seal of Department of the Interior.]

Report.

San Francisco, California,
February 9, 1877.

To Hon. Zachariah Chandler, Secretary of the Interior of the United States of America:

Sir: We, the undersigned, commissioners of the United States appointed to examine the ninth (9th) section of twenty (20) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, commencing at the end of section number eight (8) of the Southern Pacific Railroad (said point of commencement being in the northeast quarter (N. E. ¼) of section two (2), township nineteen (19) south, range twenty (20) east, Mount Diablo base and meridian), running thence in a southwesterly direction and ending at the termination of the twentieth (20th) mile therefrom in the northwest quarter (N. W. ¼) of section eleven (11), township twenty (20) south, range seventeen (17) east, Mount Diablo base and meridian, certify: That we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the government should accept as first class.

That in this distance (20 miles) there are:

18.272 feet of level line.
10.000 feet of grades, 0 to 5 feet per mile
35.200 feet of grades, 5 to 10 feet per mile.
23.314.5 feet of grades, 10 to 15 feet per mile.
12.713.5 feet of grades, 15 to 20 feet per mile.
3.300 feet of grades, 20 to 25 feet per mile.
2.200 feet of grades, 25 to 30 feet per mile.
600 feet of grades, 52 8-10 to feet per mile.

105.600 feet, or 20 miles, total length.

Maximum grade, 52 8-10 feet per mile.

That also in this distance of twenty (20) miles there are:

102,786.6 feet of straight line.
2,813.4 feet of curve 0° 30′.

Total length, 105.600 feet, or twenty (20) miles.

Minimum radius, 11,459.2 feet.

That this section of twenty miles is laid with steel rails, which are all of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 feet 8½ in.); that the rails weigh not less than fifty (50) pounds per lineal yard; that all the joints are made with fish-plates, and all the rails are fastened with four spikes to each tie; that there are three (3) sidings, having an aggregate length of 4,121½ feet, connected with the main track at each end with good switches; that there is one turntable track 295 feet long, connected with the main track with a good switch; that

there is an average of 2,640 ties per mile, of redwood or red cedar timber, 6x8 inches by 8 feet long.

That said twenty-mile section is ballasted with a superior quality of sand and gravel, of which the roadbed is composed, no better material being found within very many miles of the line of the railroad.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are seven (7) bridges, as follows:

	Length	No. of spans	Width of spans
1 pile bridge..	4,816 feet	301	16 feet.
3 pile bridge..	32 feet	2	16 feet.
2 pile bridge..	16 feet	1	16 feet.
1 pile bridge..	13 feet	1	13 feet.

Total, 7 pile bridges.

That there are three (3) culverts, as follows

	ft.
2 box culverts, 2x2 of redwood.	
1 box culverts, 2x3, of redwood.	

Total, 3 box culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles from the railroad.

The timber used in the construction of the bridges, culverts, and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties) and well known on the Pacific Coast and universally sought after on account of its great durability and resistance to decay.

We have the assurances of the managers and directors that the culverts and bridge abutments now constructed of timber will be rebuilt in stone when and as the same may become necessary and suitable materials can be found within a reasonable distance of the line of the road.

That at Kings river there is one water tank of 8,000 gallons' capacity, supplied from Kings river by a steam pump.

That there are no wood or coal houses, none being required, the fuel for locomotives being taken on from coal platforms at Huron and at other points on the road outside of this twenty-mile section and heretofore reported upon. If fuel houses shall be found necessary on this section the officers promise that they shall be built immediately.

That at Huron there is one coal platform 16 feet by 75 feet.

That there are section-houses for the accommodation of employees as follows:

Two at Lemoore, viz:

One 12 feet by 14 feet.

One 14 feet by 18 feet.

Two at Huron, viz:

One 12 feet by 14 feet.

One 14 feet by 18 feet.

These section-houses are sided with rough lumber, painted, and are covered with shingles.

That for the accommodation of passenger and freight business there is a station building at Lemoore, consist-

ing of a freight and passenger-house combined, 32 feet by 82 feet, made with planed lumber, painted, and covered with shingles, and having on three sides of it platforms ten (10) feet wide, and on the fourth side a platform fifty (50) feet long by fifty-two (52) feet wide.

That there are also at Lemoore:

One stock-pen.

One siding 1,476 feet long, with good switch at each end.

That at a point 1 6-10 miles west from Lemoore there are:

One siding 1,054½ feet long, with a good switch at one end.

One stock-pen.

That at Huron there is a station building, consisting of a freight and passenger house combined, 18 feet by 40 feet, made with planed lumber, painted, and covered with shingles, and having on each side a platform ten (10) feet wide.

There are also at Huron:

One stock-pen.

One siding 1,502 feet long, with good switch at each end.

One turntable, with 295 feet of track.

That there are no locomotive stalls or engine-houses on this section, those constructed at Tulare and other points on the road already reported upon being amply sufficient to meet its present requirements.

That no machine or repair shops have been built, those at other points upon the road and heretofore reported

upon affording full facilities for doing all such work as may be required on this section. We are informed by the officers of the company that if in the meanwhile additional facilities shall be necessary for repairs or otherwise, arrangements are perfected to have been made, when and as they may be needed, at the machine and repair shops of the San Joaquin Valley Branch of the Central Pacific Railroad, which connects at Goshen with this railroad and telegraph line.

The Southern Pacific Railroad Company owns the following locomotives and cars which are used on the entire line of its railroad, which includes this *this* twenty-mile section, viz:

Locomotives.

No.	Name.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
		Inches.		Tons.	
1	Huntington.....	54	11 x 15	16	Danforth, Cooke & Co.
2	San Francisco	60	14 x 22	25	Norris.
3	Pacific	60	14 x 22	25	Norris.
4	Comanche.....	60	14 x 22	26	Danforth, Cooke & Co.
5	San Mateo	60	14 x 22	26	Danforth, Cooke & Co.
6	California	60	16 x 24	32	Booth & Co.
7	Atlantic.....	60	16 x 24	32	Booth & Co.
8	Union.....	48	14 x 18	18	Booth & Co.
9	James Donahue....	66	17 x 22	32	Danforth, Cooke & Co.
10	H. M. Newhall.....	54	18 x 24	34	Danforth, Cooke & Co.
11	Menlo Park	66	15 x 24	30	Wm. Mason.
12	Racer.....	60	15 x 24	31	McKay & Aldus.
13	Shoshone.....	60	16 x 22	31	Norris.
14	Red Eagle.....	60	15 x 22	29	Danforth, Cooke & Co.
15	Ranger	60	15 x 24	31	McKay & Aldus.
16	Black Deer.....	60	16 x 22	31	McKay & Aldus.
17	Orinoco	60	14 x 24	28	Norris.
18	Peeler	54	15 x 22	29	McQueen, Schenectady.
19	.....	54	15 x 22	29	McQueen, Schenectady.
20	.....	60	16 x 24	34½	Baldwin.
21	.....	60	16 x 24	32	McQueen, Schenectady.
22	.....	60	16 x 24	32	McQueen, Schenectady.

Locomotives—Continued.

No.	Name.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
		Inches.		Tons.	
23	.....	60	16 x 24	32	McQueen, Schenectady.
24	.....	60	16 x 24	32	McQueen, Schenectady.
25	....	60	16 x 24	32	McQueen, Schenectady.
26	....	60	17 x 24	32½	McQueen, Schenectady.
27	....	60	17 x 24	32½	McQueen, Schenectady.
28	....	60	17 x 24	32½	McQueen, Schenectady.
29	....	60	16 x 24	32	McQueen, Schenectady.
30	....	56	17 x 24	32	Central Pacific R. R. Co., Sacramento.
31	....	62	14 x 22	26	McQueen, Schenectady.
32	....	62	12 x 22	25	McQueen, Schenectady.
33	....	62	12 x 22	25	McQueen, Schenectady.
34	....	62	9 x 18	15	Vulcan Iron Works, San Fran'co.
35	....	54	18 x 24	32½	McQueen, Schenectady.
36	....	54	18 x 24	32½	McQueen, Schenectady.
37	....	54	18 x 24	32½	McQueen, Schenectady.
38	....	54	18 x 24	32½	McQueen, Schenectady.
39	....	54	18 x 24	32½	McQueen, Schenectady.
40	.....	54	18 x 24	32½	McQueen, Schenectady.
41	.....	54	18 x 24	32½	McQueen, Schenectady.
42	.....	54	18 x 24	32½	McQueen, Schenectady.
43	.....	54	18 x 24	32½	McQueen, Schenectady.
44	.....	54	18 x 24	32½	McQueen, Schenectady.

Cars.

34 passenger cars.
1 parlor car.
4 passenger and baggage cars.
6 smoking cars.
20 emigrant cars.
8 baggage cars.
1 officers' car.
1 pay car.
1 hunting car.
4 caboose cars.
1 boarding car.
117 box cars.
440 combination cars.
24 stock cars.
328 flat cars.
12 dump cars.
9 stone cars.
54 hand cars.
48 push cars.
2 wood cars.

The above locomotives and cars are amply sufficient to accommodate present commerce and travel, as this section of twenty miles runs through a country almost unsettled and undeveloped, affording but little, if any, present additional business to the road. The officers of the company say that when other rolling stock shall be required it will be immediately procured.

That said twenty miles of railroad and telegraph line

are constructed as near as may be on the line specified in the "Joint Resolution" concerning the Southern Pacific Railroad of California, approved June 28, 1870, to-wit, "on the route indicated by the map filed by the Southern Pacific Railroad Company in the department of the interior on the third day of January, 1867."

Tha said section of railroad and telegraph line or any part thereof has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That this section of railroad and telegraph line was completed and equipped on the ninth (9th) day of January, 1877, and that both are first class.

That the telegraph line is constructed as follows: Not less than 30 redwood poles to the mile, size at bottom, 8x8 inches, at top, 4x5 inches, length, 24 feet; they are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

Respectfully submitted,

LEWIS M. FOULKE,
CALVIN BROWN,
EUGENE L. SULLIVAN,
U. S. Railroad Commissioners.

State of Caliornia,
City and County of San Francisco. } ss.

Lewis M. Foulke, Calvin Brown, and Eugene L. Sullivan, being duly sworn, severally each for himself, says that he is United States Railroad Commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

LEWIS M. FOULKE.
CALVIN BROWN.
EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Samuel H. Dwinelle, judge of the district court of the fifteenth judicial district of California in and for the city and county aforesaid, the same being a court of record. As witness my hand and the seal of said Court this ninth day of February, A. D. 1877.

SAMUEL H. DWINELLE,
District Judge.

I hereby certify that Samuel H. Dwinelle is the acting judge of said court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature. Witness my hand and the seal of said court this ninth day of February, A. D. 1877.

THOS. H. REYNOLDS,
County Clerk of the city and county of San Francisco, California, and ex officio clerk of said district court of fifteenth judicial district, California.

[District Court, San Francisco County, California, fifteenth district.]

Letter of the Secretary.

Z. B. S.

Department of the Interior.

Office of the Secretary,

Washington, D. C., 20th Feb., 1877.

Sir: I have the honor to submit herewith for your consideration and, if deemed proper, for your approval, the report, under date of the ninth instant, of Messrs. L. M. Foulke, Calvin Brown, and Eugene L. Sullivan, commissioners appointed by you to examine the Southern Pacific Railroad and telegraph line of California. They have examined a section (9th) of twenty miles, beginning at a point in the northeast one-quarter of section 2, township 19 south, range 20 east, Mount Diablo base and meridian, running thence in a southwesterly direction and ending at a point in the northwest one-quarter of section 11, township 20 south, range 17 east, same base and meridian. They report said section as completed and equipped as a first-class railroad, and the telegraph line also as completed and first class. I therefore respectfully recommend the acceptance of said ninth section and the issuance to the company constructing it of patents for lands due on account of said construction, agreeably to the provisions of law.

I am, sir, very respectfully, your ob't servant,

CHAS. T. GORHAM,

Acting Secretary.

The President.

[Endorsement]: Southern Pacific. Department of the Interior. 20th February, 1877. Chas. T. Gorham, acting secretary.

Submits to the President report of commissioners on ninth section 20 miles, Southern Pacific Railroad of California.

Approval by the President.

Executive Mansion, February 21, 1877.

The within recommendations are approved.

U. S. GRANT.

Department of the Interior, Feb. 21, 1877.

[Endorsement]: Copy of this letter and map to G. L. O., with letter of Feb. 22, 1877.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 284. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,)
Southern District of California.) ss.

I, Wm. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 284, in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 286.

Certificate.

A. M.
J. T. S.
H.H. B.

United States of America.
Department of the Interior.
Washington, D. C., July 30, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original, as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior.
E. W.

[Seal of Department of the Interior.]

LETTER OF INSTRUCTIONS.

Department of the Interior.
Washington, D. C.,
28th January, 1878.

Messrs. Eugene L. Sullivan, Esq., A. S. Bender, Esq., (Bohemian Club), and Lieut. Col. B. S. Alexander, U. S. Engineers, Commissioners Southern Pacific Railroad, San Francisco, Cal:

Gentlemen:

The President of the Southern Pacific Railroad Company having reported the completion of an additional section of 41.66 miles of the road and telegraph line constructed by said company, beginning 100 miles south from Goshen, at the end of the seventh twenty-mile section of said road, heretofore reported upon, said point of commencement being in the southeast one-quarter of section 33, township 30 south, range 31 east, Mount Diablo base and meridian, and running thence in a southeasterly direction, ending at the termination of the 41.66 mile therefrom, in the northeast one-quarter of section 17, township 11 north, range 12 west, same base and meridian, you will proceed without delay to examine and report thereon, in accordance with instructions heretofore given.

Very respectfully,

C. SCHURZ,
Secretary.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 286. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America, }
Southern District of California. } ss.

I, Wm. Van Dyke, clerk of the Circuit Court of the

United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 286, in the case entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
[Seal] Clerk.

[Endorsed]: May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 287

REPORT OF COMMISSIONERS.

Certificate.

J. I. P. A. M.

United States of America.

M. C. McN.

P. M. S.

Department of the Interior.

Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, with endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my

name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting Secretary of the Interior.

E. W.

[Seal of Department of the Interior.]

Report.

San Francisco, California,
January 30, 1878.

To Hon. Carl Schurz, Secretary of the Interior of the United States of America:

Sir: We, the undersigned, commissioners of the United States, appointed to examine the tenth (10th) section of forty-one 66-100 (41 66-100) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, commencing at a point at the end of the one-hundredth (100th) mile on the line of the said railroad south from intersection of the Southern Pacific Railroad with the San Joaquin Valley Branch of the Central Pacific Railroad, said point of commencement being in the southeast quarter (S. E. ¼) of section thirty-three (33), township thirty (30), south, range thirty-one (31) east, Mount Diablo base and meridian, running thence in a southeasterly direction, and ending at the termination of the forty-first 66-100 (41 66-100) mile therefrom in the northeast quarter (N. E. ¼) of section seventeen (17), township eleven (11) north, of range twelve (12) west, San Bernardino base and meridian, certify, That we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map and profile, and are such

as, in view of the capabilities of the ground, the government should accept as first class.

That in this distance (41 66-100) miles there are:

10,903.4	feet	of	level	line.				
6,000.0	"	"	grades.	5	to	10	feet	per mile.
1,000.0	"	"	"	10	to	15	"	" "
4,600.0	"	"	"	15	to	20	"	" "
4,100.0	"	"	"	20	to	25	"	" "
5,100.0	"	"	"	25	to	30	"	" "
3,600.0	"	"	"	30	to	35	"	" "
1,900.0	"	"	"	35	to	40	"	" "
4,400.0	"	"	"	40	to	45	"	" "
5,800.0	"	"	"	50	to	55	"	" "
4,600.0	"	"	"	55	to	60	"	" "
4,600.0	"	"	"	60	to	65	"	" "
2,300.0	"	"	"	65	to	70	"	" "
3,400.0	"	"	"	70	to	75	"	" "
4,330.7	"	"	"	75	to	80	"	" "
1,994.5	"	"	"	80	to	85	"	" "
1,200.0	"	"	"	85	to	90	"	" "
1,000.0	"	"	"	90	to	95	"	" "
1,800.0	"	"	"	95	to	100	"	" "
1,000.0	"	"	"	100	to	105	"	" "
54,297.6	"	"	"	105	to	110	"	" "
12,915.4	"	"	"	110	to	115	"	" "
79,118.8	"	"	"	115	to	116 16-100	"	" "

219,960.4 feet or 41 66-100 miles, total length.

Maximum grade, 116 16-100 feet per mile.

That, also, in this distance of forty-one 66-100 (41-66-100) miles, there are:

106,138.7	feet	of	straight	line.	
22,571.6	"	"	curve	10′	to 1°
2,482.8	"	"	"	1°	" 2°
6,343.1	"	"	"	2°	" 3°
19,539.2	"	"	"	3°	" 4°
6,453.4	"	"	"	4°	" 5°
8,852.6	"	"	"	5°	" 6°
1,841.9	"	"	"	6°	" 7°
1,965.6	"	"	"	7°	" 8°
3,574.2	"	"	"	8°	" 9°
40,197.3	"	"	"	9°	"10°

Total, 219,960.4 feet or forty-one 66-100 (41 66-100) miles.

Minimum radius, 573 69-100 feet.

That the whole of this distance of forty-one 66-100 (41-66-100) miles, is laid with steel rails; that the steel is of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½in.); that the rails weigh not less than fifty (50) pounds per lineal yard; that the joints are made with fish-plates, and all the rails fastened with four spikes to each tie; that there are twelve (12) sidings having an aggregate length of 16,289.4 feet, connected with the main track at each end with a good switch; that there is one siding 1,463 feet long, connected with the main track by a good switch at one end; that there are two

turntable tracks having an aggregate length of 1,077 feet, connected with the main track by a good switch; that there is an average of 2,640 ties per mile, of redwood or red-cedar timber 6 by 8 inches by eight feet long.

That the said forty-one 66-100 mile section is ballasted with a superior quality of sand and gravel, of which the roadbed is composed, no better material being found within very many miles of the line of the railroad.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are seventeen (17) bridges, all built on pile foundation as follows, viz:

1 bridge over Tehachapi creek, 462 feet long, composed of three spans, 64 feet each, of straining-beam bridge and of 270 feet of piled approaches, consisting of 17 spans of 16 feet each.

1 bridge over Tehachapi creek, 345½ feet long, composed of three spans, 64 feet each of straining beam bridge and of 153½ feet of piled approaches, consisting of 10 spans of 15 1-3 feet each,

1 bridge over Tehachapi creek, 257 feet long, composed of one Howe's truss span of 53 feet, and of 204 feet of piling, consisting of 17 spans of 12 feet each.

1 bridge over Tehachapi creek, 202 feet long, composed of one span of 64 feet, of straining-beam bridge, and of 138 feet of piling, consisting of 9 spans of 15 1-3 feet each.

1 bridge over Tehachapi creek, consisting of one span of 64 feet, of straining-beam bridge.

Also, the following pile bridges.

		Length.	No. of spans.	Width of spans.
1	pile bridge....	403.9 feet	26	15½ feet
1	" "	63.2 "	4	16 "
1	" "	45.0 "	3	15 "
1	" "	30.0 "	2	15 "
1	" "	28.0 "	2	14 "
3	" "	15.0 "	1	15 "
4	" "	14.0 "	1	14 "

17 bridges, total.

That there are eighty (80) culverts, as follows:

		ft.		ft.	
5	box culverts	1	x	1	of redwood.
1	" "	1	x	1½	" "
5	" "	1	x	2	" "
1	" "	1	x	2½	" "
1	" "	1½	x	1½	" "
12	" "	2	x	2	" "
1	" "	2	x	2½	" "
6	" "	2	x	3	" "
1	" "	4	x	4	" "
1	open "	1	x	1½	" "
26	" "	2	x	2	" "
4	" "	2	x	3	" "
2	" "	8 feet open			"

Total, 66 culverts of timber.

8	box culverts	2	x	2	of stone.
2	" "	2	x	3	" "
1	" "	2½	x	3	" "

3 4 feet semicircular arched culverts of stone.
— sides, to springing line of arch, 3 feet high.

Total, 14 culverts of stone.

No stone suitable for building purposes could be found, generally, along the line of the road, in places that were reasonably accessible. It would, in consequence of the rough and mountainous character of the country, require a haul by wagon of at least ten miles to get a proper quality of stone to the points on the road where it could have been used, although, in some instances, ledges of rock occurred where the distances, in a direct line, were much less. At one or two points enough of good stone was found for the construction of fourteen culverts.

The timber used in the construction of the bridges, culverts, and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties) well known on the Pacific coast and universally sought after on account of its great durability and resistance to decay.

We have the assurances of the managers and directors that the culverts and bridge abutments now constructed of timber, will be rebuilt in stone, when, and as the same may become necessary, and suitable material can be found within a reasonable distance of the line of the road.

That in this section of forty-one 66-100 (41 66-100) miles, there are fifteen (15) tunnels having an aggregate length of 7,205.9 feet. viz:

Note. Tunnels Nos. 1 and 2 are situated in 20-mile section No. Seven (7), which immediately precedes this section, and which has been already reported upon.

Tunnel No. 3 Situated 1.6 miles from the commencement of this section. 707.7 feet in length, of which 541 feet are on tan-

gent, 99 feet on 10° curve, and 67.7 feet on 7° curve.

Tunnel No. 4 Situated 1.8 miles from the commencement of this section. 257 feet in length,—all of which is on 10° curve.

Tunnel No. 5 Situated 2.4 miles from commencement of this section. 1,156.3 feet in length, 913.9 of which is on tangent and 242.4 feet on 9° 20′ curve.

Tunnel No. 6 Situated 2.7 miles from the commencement of this section, 303.7 feet in length,—all of which is on 10° curve.

Tunnel No. 7 Situated 4.5 miles from the commencement of this section, 532.7 feet in length,—all of which is on 10° curve.

Tunnel No. 8 Situated 5 miles from the commencement of this section, 690 feet in length,—of which 530.1 feet are on tangent and 159.9 feet are on 10° curve.

Tunnel No. 9 Situated 11.8 miles from the commencement of this section. 426.2 feet in length,—all of which is on 0° 20′ curve. Here occurs the curved pieceof line popularly known as the "Loop." The road, after leaving this tunnel, is constructed for 3,794 7-10 feet, on a spiral curved line of about 10°, and,on the crestof the ridge, crosses directly over the tunnel, at a perpendicular height of 77 46-100 feet above the roadbed beneath. By

this arrangement, and by constructing 2 58-100 miles of road, at a maximum grade of 116 feet per mile, it was made possible to surmount an elevation of 281 48-100 feet between two points distant 0 83-100 mile from each other on an air line. The company was enabled thereby, to improve the location of its line between Caliente and this tunnel, and to construct the road on more favorable ground and at a cheaper rate than otherwise could have been done. Most of the rugged mountain spurs and deep canyons are avoided and the road is placed on the gentle slopes bordering the valleys, thereby greatly increasing its safety and making its repair less expensive.

Tunnel No. 10 Situated 13.1 miles from the commencement of this section — 306.6 feet in length—all of which is on 10° curve.

Tunnel No. 11 Situated 13.8 miles from the commencement of this section—158.8 feet in length—of which 75 feet are on tangent and 83.8 feet are 4° curve.

Tunnel No. 12 Situated 15.8 miles from the commencement of this section—756.3 feet in length—all of which is on 10° curve.

Tunnel No. 13 Situated 16 miles from the commencement of this section, 513.8 feet in length—all of which is on 10° curve.

Tunnel No. 14 Situated 16.2 miles from the commencement of this section, 512.7 feet in length, 14 feet of which are on tangent and 498.7 feet are on 10° curve.

Tunnel No. 15 Situated 16.5 miles from the commencement of this section, 360.7 feet in length,—of which 284.3 feet are on tangent and 76.4 feet are on 5° curve.

Tunnel No. 16 Situated 16.7 miles from the commencement of this section—262.5 feet in length,—of which 33.1 feet are on 30′ curve and 229.4 feet are on 10° curve.

Tunnel No. 17 Situated 16.8 miles from the commencement of this section,—260.9 feet in length,—of which 35.6 feet are on 0° 30′ and 225.3 feet are on 10° curves.

That tunnels numbers 3, 4, 5, 6, 9, 12, 13, 14, 15, 16, and 17 were excavated thro' soft rock and required lining throughout their entire length. They are, consequently, well and substantially timbered with the best quality of coast redwood or Puget Sound cedar. The arch ribs (10 x 14 in.) which support the sheeting, being in no case more than 5 feet apart from center to center, but being placed much nearer wherever the nature of the ground required it, which was generally the case, causing the average distance between centers to be about 3½ feet.

That tunnels numbers 7, 8, 10, and 11 were excaved thro' a sounder quality of rock and required timbering for a part of their length only. Wherever, from the nature of the ground passed through, these tunnels required to

be timbered, it was done in the same substantial manner as in the other tunnels above described.

That all these tunnels have the following dimensions in the clear, viz.

Height from floor to soffit of arch, 20 feet 10 inches.

Height from floor to springing line of arch 12 feet 10 inches.

Width at floor, 14 feet.

Width at springing line of arches 16 feet.

That on curves over 4° the two latter dimensions are increased as follows, viz.

Width at floor 15 feet.

Width at springing line of arch 17 feet.

Suitable portals of timber, strongly framed, have been erected at the ends of each of the tunnels (with the exception of the south end of tunnel No. 11.) Proper provision has, also, been made for the drainage of the tunnels.

That there are six (6) water tanks, each of 52,000 gallons capacity, supplied from springs by gravity. That these tanks are located as follows, viz.

One, each at Bealeville and Keane.

One at a point two miles west of Tehachapi Summit railroad station.

One, at Cameron and two, at Mojave.

That there are no wood or coal houses, none being required, the fuel for locomotives being taken on from coal platforms at Caliente and Mojave, and also at other points on the road outside of this 41 66-100 miles section and heretofore reported upon. If fuel-houses shall be found necessary on this section the officers promise that they will be built immediately.

That there are section-houses for the accommodation of employés, as follows, viz:

Three at Bealeville: One size 16 x 30, with wing 12 x 16 feet. One, size 14 x 20 feet. One, size 12 x 20 feet.

Three at Keane: One, size 16 x 30, with wing 12 x 16 feet. One, size 14 x 24 feet. One, size 12 x 14 feet.

Three at a point 2 miles west of Tehachapi summit station: One, size 16 x 30, with wing 12 x 16 feet. One, size 18 x 20 feet. One, size 12 x 14 feet.

Three at Cameron: One, size 16 x 30, with wing 12 x 16 feet. One, size 18 x 21 feet. One, size 12 x 14 feet.

Four at Mojave: One, size 16 x 30, with wing 12 x 16 feet. One, size 14 x 22 feet. One, size 12 x 14 feet. One, size, 24 x 24 feet.

The section-house 24 x 24 feet at Mojave is made with planed lumber, while all the others are built of rough lumber, painted, and covered with shingles.

That there are six (6) hand car and tool houses along the line of the road, as follows, viz:

At Bealeville: One, size 14 x 20 feet.

At Keene: One, size 14 x 20 feet.

At a point two miles west of Tehachapi summit station: One, size 14 x 27 feet.

At Cameron: One, size 14 x 20 feet.

At Mojave: Two, size 12 x 16 feet each.

All these hand-car and tool houses are sided with rough lumber, painted, and covered with shingles.

That for the accommodation of passenger and freight business there isa station building at Keene,consisting of a passenger and freight house combined, 24 feet by 62

feet, made with planed lumber, painted, and covered with shingles and having platforms 10 feet wide on each side.

That there are also at Keene

One sand-house, size 12 x20 feet, built of rough lumber, painted and covered with shingles.

One siding, 1,186 feet long, with good switches at each end.

That there is a station building at Tehachapi summit, consisting of a passenger and freight house combined, 32 feet by 82 feet, built of planed lumber, covered with shingles and painted and having platforms 10 feet wide on each side.

One siding, 2,157.5 feet long, with good switches at each end.

One siding, 1,736.5 feet long, with good switches at each end.

One turntable with 305 feet of track.

That there is a station building at Mojave, 32 feet by 131.6 feet, built of planed lumber, painted and covered with shingles and having a platform 10 feet wide on three sides, and one 50 feet by 52 feet on the fourth side.

That there are, also, at Mojave:

One engine house of fifteen stalls, built of rough lumber, and painted and covered with sheet iron.

One office building 25 x 40 feet, built of planed lumber painted and covered with shingles.

One office building, 20 x 40 feet, built of rough lumber, painted and covered with shingles.

One sand-house, 24 x 30 feet.

One coal platform, 28 x 422 feet

One turn-table, with 772 feet of track.

One siding, 1,994.7 feet long, with good switches at each end.

One siding, 1,585.7 feet long, with good switches at each end.

One siding, 1,292 feet long, with good switches at each end.

One siding, 1,241 feet long, with good switches at each end.

One siding, 959 feet long, with good switches at each end.

One siding, 882 feet long, with good switches at each end.

One siding, 1,463 feet long, with a good switch at one end.

That, in addition to the sidings described above, at Keene, Tehachapi and Mojave, there are others situated as follows, viz:

One siding, at Bealeville 1,034 feet long, with good switch at each end.

One siding, at Girard, 970 feet long, with good switch at each end.

One siding, at Cameron, 1,251 feet long, with good switch at each end.

That no machine or repair shops have been built, those at other points upon the road and heretofore reported upon, being amply sufficient to meet its present requirements.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are used on the entire line of its railroad, which includes this forty-one and sixty-six one-hundredths miles section, viz:

Locomotives.

No.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
	Inches.	Inches.	Tons.	
1	54	11 x 15	16	Danforth, Cooke & Co.
2	60	14 x 22	25	Norris.
3	60	14 x 22	25	do.
4	60	14 x 22	26	Danforth, Cooke & Co.
5	60	14 x 22	26	do. do.
6	60	16 x 24	32	Booth & Co.
7	60	16 x 24	32	do.
8	48	14 x 18	18	do.
9	66	17 x 22	32	Danforth, Cooke & Co.
10	54	18 x 24	34	do. do.
11	66	15 x 24	30	William Mason.
12	60	15 x 24	31	McKay & Aldus.
13	60	16 x 22	31	Norris.
14	60	15 x 22	29	Danforth, Cooke & Co.
15	60	15 x 22	31	McKay & Aldus.
16	60	16 x 22	31	do. do.
17	60	14 x 24	28	Norris.
18	54	15 x 22	29	McQueen, Schenectady.
19	54	15 x 22	29	do. do.
20	60	16 x 24	34½	Baldwin.

Locomotives—Continued.

No.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
	Inches.	Inches.	Tons.	
21	60	16 x 24	32	McQueen, Schenectady.
22	60	16 x 24	32	do. do.
23	60	16 x 24	32	do. do.
24	60	16 x 24	32	do. do.
25	60	16 x 24	32	do. do.
26	60	17 x 24	32½	do. do.
27	60	17 x 24	32½	do. do.
28	60	17 x 24	32½	do. do.
29	60	17 x 24	32	do. do.
30	56	17 x 24	32	Central Pacific R. R., Sacramento.
31	62	14 x 22	26	McQueen, Schenectady.
32	62	12 x 22	25	do. do.
33	62	12 x 22	25	do. do.
34	62	9 x 18	15	Vulcan Iron Works, San Francisco.
35	54	18 x 24	32½	McQueen, Schenectady.
36	54	18 x 24	32½	do. do.
37	54	18 x 24	32½	do. do.
38	54	18 x 24	32½	do. do.
39	54	18 x 24	32½	do. do.
40	54	18 x 24	32½	do. do.
41	54	18 x 24	32½	do. do.
42	54	18 x 24	32½	do. do.
43	54	18 x 24	32½	do. do.
44	54	18 x 24	32½	do. do.

Cars.		
35	Passenger	Cars.
1	Parlor	"
1	Passenger and baggage	"
8	Smoking	"
23	Emigrant	"
8	Baggage	"
1	Officers	"
1	Pay	"
1	Hunting	"
8	Caboose	"
1	Boarding	"
117	Box	"
440	Combination	"
Forward, 645		
24	Stock	Cars.
328	Flat	"
12	Dump	"
8	Stone	"
116	Hand	"
62	Push	"
2	Wood	"
20	Water	"
1,217	Cars.	

The above locomotives and cars are more than sufficient for present business and requirements, and no more will be needed for some considerable time to come, as this section of forty-one and sixty-six one-hundredths

miles runs through a country almost unsettled and undeveloped, affording but little, if any, present additional business to the road. The officers of the company say that when other rolling stock shall be required it will be immediately procured.

That said forty-one and sixty-six one-hundredths miles of railroad and telegraph line are constructed as near as may be, on the line specified in the "joint resolution" concerning the Southern Pacific Railroad of California, completed and equipped on the seventeenth day of De- by the map filed by the Southern Pacific Railroad company in the department of the interior, on the third of January, 1867."

That said section of railroad and telegraph line, or any part thereof, has not been constructed "on the line of any other railroad route, to aid in the construction of which, lands have heretofore, (prior to July 27, 1866) been granted by the United States."

That this section of railroad and telegraph line was completed and equipped on the seveneenth day of December, 1877, and that both are first-class.

That the telegraph line is constructed as follows: Not less than 30 redwood poles to the mile; size at bottom, 8x8 inches; at top 4x5 inches; length 24 feet; they are set to a depth of four feet in the ground, number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style and are furnished by the best manufacturers.

We recommend the acceptance by the governmnt, of the section forty-one sixty-six one-hundredths (41 66-100)

miles of railroad and telegraph line, hereinbefore described.

Respectfully submitted,

EUGENE L. SULLIVAN,
ANDREW S. BENDER,
BARTON S. ALEXANDER,
United States railroad Commissioners.

State of California,
City and County of San Francisco. } ss.

Eugene L. Sullivan, Andrew S. Bender and B. S. Alexander, being duly sworn, severally, each for himself, says, that he is United States railroad commissioner and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

EUGENE L. SULLIVAN,
ANDREW S. BENDER,
BARTON S. ALEXANDER,

Subscribed and sworn to before me, E. D. Wheeler, Judge of the District Court of the nineteenth Judicial District of the State of California, in and for the city and county of San Francisco, this thirtieth day of January, A. D. 1878, said Court being a Court of record.

E. D. WHEELER,
District Judge of the Court aforesaid.

I hereby certify that E. D. Wheeler is the acting judge of said Court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature. Witness my hand

and the seal of said Court this thirtieth day of January, A. D. 1878.

THOS. H. REYNOLDS.

County clerk of the city and county of San Francisco, California, and ex officio clerk of said District Court of nineteenth Judicial District.

District Court,
San Francisco, County,
California, nineteenth District.

Letter of the Secretary.

Z. B. S.

Department of the Interior.

Washington, D. C., 11 Feb., 1878.

Sir: I have the honor to transmit herewith the report of Messrs. Eugene L. Sullivan, Andrew S. Bender, and Barton S. Alexander, commissioners appointed by you to examine the railroad and telegraph line constructed by the Southern Pacific Railroad Company of California.

They have examined a section of forty-one and sixty-six one-hundredths miles, beginning at a point in the southeast one-quarter of section 33, township 30 south, range 31 east, Mount Diablo base and meridian, running southeast, and ending at a point in the northeast one-quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian.

They represent said section as completed and equipped as a first-class railroad, and the telegraph line also as completed and first-class. I therefore respectfully recommend the acceptance of said section (10) and the issuance

to the company of patents for lands due on account of its construction, agreeably to the provisions of law.

I am, sir, very respectfully, your obedient servant,

C. SCHURZ,
Secretary.

The President.

[Endorsement]: Department of the interior. Eleventh of February, 1878. C. Schurz, secretary.

Submits to the President report of commissioners on tenth section, forty-one and sixty-six one-hundredths miles, of Southern Pacific Railroad of California.

Approval by the President.
Executive Mansion, Feb. 13, 1878.

The within recommendations are approved.

R. B. HAYES.

Department of the
interior,
Feb. 18, 1878.

Copy to commissioner G. L. O. and Mr. Huntington notified fourteenth of February, 8.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 287. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Southern District of California. } ss.
United States of America. }

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the fore-

going papers with an original exhibit filed in my office, November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 287, in the case entitled, The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 289.

Certificate.

J. I. P. A. M.
J. T. S.
H. H. B.

United States of America.
Department of the Interior.
Washington, D. C., July 30, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the in-

terior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,

Acting secretary of the interior.

E. W.

[Seal of department of the interior.]

LETTER OF INSTRUCTIONS.

Z. B. S.

Washington, 10 Dec. 1884.

Gentlemen:

Application having been made by C. P. Huntington, A. & A. of the Southern Pacific Railroad Company of California, for the examination, by commissioners, of two hundred and forty-two and 507-1000 (242 507-1000) miles of the completed line of said company's road, commencing at Mohave Junction, California, and ending at the Needles, on the Colorado river, California, you have been appointed by the President of the United States, commissioners to examine and report upon the same.

The appointment is made upon condition that you have neither directly nor indirectly any interest in this corporation, nor any connection with or bias for or against it which would interfere with an impartial performance of the duties imposed upon you. Three commissioners are required to make the examination and sign the report; therefore, if either should decline, the others will not be authorized to act until they are advised of the appointment of another person to fill the vacancy.

A map and profile of the road examined will be transmitted with your report. I inclose herewith forms of certificates to be made on such map and profile by the president and chief engineer of the company.

You will be guided in the discharge of your duties by the "Circular of instructions for the examination of railroads," dated 28th April, 1871—copy herewith.

The president of the company will furnish you with his affidavit, showing the commencement, termination, and length of the road to be examined, and that it is completed as required by law and the instructions of this department. The affidavit will accompany your sworn report to the "secretary of the interior."

The twenty-first section of the act of 27th July, 1866 (14 Statutes, 299), fixes your compensation at ten dollars per day for each day actually and necessarily employed, and ten cents per mile for each mile actually and necessarily traveled in discharging the duties required of you, which per diem and mileage shall be in full compensation for your services, and must be paid by the company. Duplicates of the receipts given by you, on payment thereof, will be inclosed with the report.

Very respectfully,

M. L. JOSLYN,
Acting secretary.

To Wm. W. Burhans, 501 14th St., N. W.
Orlando O. Stealey, 603 14th St., N. W.
Wm. G. Nicholas, 908 14th St., N. W.
Washington, D. C.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 289. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office Nov. 19, 1895, said original exhibit being described as Defendants' Exhibit No. 289, in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 290.

REPORT OF COMMISSIONERS.

Certificate.

J. I. P. A. M.
M. C. McN.
P. M. S.

United States of America.
Department of the Interior.
Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I here-

by certify that the annexed paper is a true copy of the original, with endorsement, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JOHN M. REYNOLDS,
Acting Secretary of the Interior.
E. W.

(Seal of Department of the Interior.)

Report.

San Francisco, California, December 27, 1884.

To Honorable H. M. Teller,
Secretary of the Interior of the United States of America.

Sir:

We, the undersigned, commissioners of the United States appointed to examine the following-mentioned sections, viz., the eleventh (11th) section of forty (40) miles, the twelfth (12th) section of forty (40) miles, the thirteenth (13th) section of forty (40) miles, the fourteenth (14th) section of forty (40) miles, the fifteenth 15th) section of forty (40) miles, and the sixteenth (16th) section of 42 507.1000 (42.507) miles of the railroad and telegraph line of the Southern Pacific Railroad Company of California, commencing at a point at the end of the one hundred and forty-first and sixty-six one hundredth (141.66) mile on the line of said railroad southeasterly from the intersection of the Southern Pacific Railroad of California with the San Joaquin Valley branch of the Central Pacific Railroad (said point of commencement being in the northeast one-quarter (N. E. ¼) of section seventeen (17),

township eleven (11) north, range twelve (12) west, San Bernardino meridian) and running thence *in a* in a generally easterly direction and ending at the termination of the two hundred and forty-second and five hundred and seven one-thousandth (242 507-1000) mile therefrom, at a point on the Colorado river near "The Needles," certify that we have carefully examined such sections, and that the alignment and grades are as represented on the accompanying maps, designated as maps "J," "K," "L," "M," "N," and "O," of sections 11, 12, 13, 14, 15, and 16 respectively, and the profiles thereon, and are such as, in view of the capabilities of the ground, the government should accept as first class.

That in this distance (242.507 miles) there are:—

112,088.7	feet	of	level	line.					
42,100.0	"	"	grades,	0	to	5	feet	per	mile.
76,827.0	"	"	"	5	to	10	"	"	"
95,900.0	"	"	"	10	to	15	"	"	"
108,750.0	"	"	"	15	to	20	"	"	"
71,622.0	"	"	"	20	to	25	"	"	"
99,777.8	"	"	"	25	to	30	"	"	"
85,252.2	"	"	"	30	to	35	"	"	"
89,500.0	"	"	"	35	to	40	"	"	"
48,506.5	"	"	"	40	to	45	"	"	"
55,036.2	"	"	"	45	to	50	"	"	"
172,084.0	"	"	"	50	to	55	"	"	"
287.5	"	"	"	55	to	60	"	"	"
9,794.7	"	"	"	60	to	65	"	"	"
18,071.7	"	"	"	65	to	70	"	"	"
194,839.0	"	"	"	70	to	73.92	"	"	"

1,280,437.3 feet total, or 242.507 miles.

Maximum grade, 73.92 feet per mile.

That also in this distance of 242.507 miles there are:—

1,040,496.9 feet of straight line.

46,320.2 feet of curve, 10 minutes to 1 degree

87,299.1 feet of curve 1 degree to 2 degrees.

45,944.7 feet of curve 2 degrees to 3 degrees.

20,843.0 feet of curve 3 degrees to 4 degrees.

8,921.5 feet of curve 4 degrees to 5 degrees.

9,059.8 feet of curve 5 degrees to 6 degrees.

6,885.8 feet of curve 6 degrees to 7 degrees.

2,920.2 feet of curve 7 degrees to 8 degrees.

2,844.3 feet of curve 8 degrees.

8,901.8 feet of curve 10 degrees.

1,280,437.3 feet total, or 242.507 miles.

Minimum radius, 573.69 feet.

That the whole of this distance of two hundred and forty-two 507-1000 (242.507) miles is laid with steel rails; that the steel is of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ inches).

That the rails weigh not less than fifty (50 pounds per lineal yard; that all the joints are made with fish-plates, and all the rails are fastened with four spikes to each tie; that there are forty (40) sidings, having an aggregate length of 76,596 feet, connected with the main line with a good switch; that there are also eight (8) sidings (*having*) having an aggregate length of 8,163 feet, connected with the main line with a good switch at one end; that there are four (4) turntable tracks, which, including radial tracks from turntable to engine-house at The Needles,

have an aggregate length of 3.765 feet. Each turntable is connected with the main line with a good switch.

That there is a bearing surface equal to an average of 2,640 ties per mile, of redwood or red cedar timber, 6 by 8 inches by 8 feet long.

That the said two hundred and forty-two 507-1000 (242.507) miles are ballasted with sand and gravel, of which the roadbed is composed, no better material being found within very many miles of the line of the railroad.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are six hundred and sixty-one (661)bridges, all built on pile foundations, as follows, viz.:

One bridge (over the Mojave river) 1,390 feet long, composed of 8 spans, 64 feet each, of straining beam bridge and of 878 feet of piled approaches, consisting of 55 spans of 16 feet each.

	Length. Feet.	No. of spans.	Width of span, ft.
1 pile bridge.....	1,280	80	16
1 pile bridge.....	1,040	65	16
1 pile bridge.....	798	50	16
1 pile bridge.....	320	20	16
1 pile bridge.....	272	17	16
2 pile bridges.....	254	16	16
1 pile bridge.....	240	15	16
2 pile bridges.....	192	12	16
1 pile bridge.....	176	11	16
5 pile bridges.....	160	10	16
1 pile bridge.....	144	9	16
2 pile bridges.....	128	8	16
1 pile bridge.....	112	7	16
16 pile bridges.....	96	6	16
8 pile bridges.....	80	5	16
30 pile bridges.....	64	4	16
44 pile bridges.....	48	3	16
113 pile bridges.....	32	2	16
392 pile bridges.....	16	1	16
2 pile bridges.....	75	5	15
2 pile bridges.....	60	4	15
3 pile bridges.....	45	3	15
2 pile bridges.....	30	2	15
9 pile bridges.....	15	1	15
1 pile bridge.....	14	1	14
6 pile bridges.....	13	1	13
2 pile bridges.....	24	2	12
10 pile bridges.....	12	1	12

661 total bridges.

That there are one hundred and thirty-one (131) culverts, as follows, viz.:

2 box culverts, 2x2 of redwood.
1 box culvert, 2x3 of redwood.
7 box culverts, 3x4 of redwood.
2 box culverts, 4x4 of redwood.
1 open culvert, 6 spans, 31 feet open, of redwood.
1 open culvert, 4 spans, 25 feet open, of redwood.
6 open culverts, 3 spans, 19 feet open, of redwood.
13 open culverts, 3 spans, 16 feet open, of redwood.
4 open culverts, 2 spans, 13 feet open, of redwood.
52 open culverts, 1 span, 8 feet open, of redwood.
37 open culverts, 1 span, 7 feet open, of redwood.
3 open culverts, 2 spans, 8 feet open, of redwood.
1 open culvert, 1 span, 4 feet open, of redwood.
1 open culvert, 1 span, 2 feet open, of redwood.

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131 total culverts of timber.

Stone suitable for building purposes could not be found, after diligent search, within twenty miles or more of the line of the road.

The timber used in the construction of the bridges, culverts, and bridge abutments is the most durable the country can afford, *b*being the black or coast redwood or red cedar (the same used for ties), well known on the Pacific Coast as a wood of great durability and resistance to decay.

We are, however, assured by the directors that the culverts and bridge abutments of timber will be built of stone when and as the same may become necessary and

suitable materials can be found within a reasonable distance of the line of the road.

That there are eight (8) water tanks of 50,000 gallons' capacity each, and that they are located as follows, viz.:

One at Yucca, supplied from a well by steam pump.

One *one* at Hinckley, supplied from a well by steam pump.

One at Daggett, supplied from a well by steam pump through a pipe 3,080 feet long.

Two at Newberry, supplied from a spring by steam pump through a pipe 1,887 feet long.

One at Danby, supplied from "Cane's Springs" by gravity through a pipe 28,490 feet long.

One at Sacramento Springs, supplied from the springs by gravity through pipe 3,500 feet long.

One at "The Needles," supplied from well by steam pump through a pipe 3,637 feet long.

That there is one coalhouse at The Needles, size 62 by 216 feet; also a coal platform at Yucca, size 17 by 30 feet, and one coal platform at Ludlow, size 28 by 84 feet.

That there are section-houses for the accommodation of employees as follows, viz.:

Three at Yucca—one 14 by 40 feet, with wing 10 by 24 feet, sided with planed lumber and double roofed.

One 18 by 20 feet, of rough lumber.

One 12 by 14 feet, of rough lumber.

Three at Kramer—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 18x20 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Hinckley—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 18x20 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Daggett—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

Section-houses at Daggett continued.

One 18x20 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Newberry—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 14x22 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Haslett—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 18x20 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Ludlow—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 18x20 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Siberia—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 18x20 feet, of rough lumber.

One 14x22 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Amboy—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 18x20 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Cadiz—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 14x22 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Danby—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 14x22 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Fenner—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 18x20 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Homer—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 14x22 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at Ibex—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 14x22 feet, of rough lumber.

One 12x14 feet, of rough lumber.

Three at The Needles—One 14x40 feet, with wing 10x16 feet, sided with planed lumber and double roofed.

One 18x20 feet, of rough lumber.

One 12x14 feet, of rough lumber.

All the above-described section-houses are painted and covered with shingles.

That, in addition to the section-houses described above there are at The Needles two (2) houses for the accommodation of the employees operating the traffic; that the size of each is 16½ by 37 feet; that they are sided with planed

lumber, provided with a ventilating roof, covered with shingles, and painted.

That there are fifteen (15) handcar and toolhouses along the line of the road, viz.:

One at Yucca, size 14 by 20 feet.

One at Kramer, size 14 by 20 feet.

One at Hinckley, size 14 by 20 feet. *One at*

Handcar and toolhouses continued.

One at Daggett, size 14 by 20 feet.

One at Newberry, size 12 by 14 feet.

One at Haslett, size 14 by 20 feet.

One at Ludlow, size 14 by 20 feet.

One at Siberia, size 12 by 14 feet.

One at Amboy, size 14 by 20 feet.

One at Cadiz, size 12 by 14 feet.

One at Danby, size 12 by 14 feet.

One at Fenner, size 14 by 20 feet.

One at Homer, size 12 by 14 feet.

One at Ibex, size 12 by 14 feet.

One at The Needles, size 14 by 20 feet.

All these toolhouses are sided with rough lumber, painted and covered with shingles.

That for the accommodation of passenger and freight business there is at Daggett a station building consisting of a passenger and freight house combined, the passenger part being 24 by 30½ feet and the freight part 25½ by 118 feet, built with planed lumber, painted, and covered with shingles and having a platform on each side, the platform in front being 14½ feet wide, that on the rear 8 feet

wide, and the platform at the ends being 12 and 36 feet wide respectively.

That there are also at Daggett—

Two sidings, each 1,981 feet long, with a good switch at each end.

One turntable, with 367 feet of track.

One water tank of 50,000 gallons capacity, supplied from a well by a steam pump.

One one pumphouse, size 18 by 24½ feet, sided with planed lumber, painted, and covered with shingles.

That there is a station building at Fenner consisting of a passenger and freight house combined, the passenger part being 24 by 30½ feet and the freight part 25½ by 124 feet, built with planed lumber, painted, and covered with shingles and having a platform on each side, the platform in front being 14½ feet wide, that on the rear 8 feet wide, and the platforms at the ends 12 and 36 feet respectively.

That there is also at Fenner—

One siding, 1,940 feet long, with a good switch at each end.

That at The Needles there is a station building consisting of a passenger depot and hotel combined, size 30 feet by 231 feet, built of planed lumber, painted, and covered with shingles and having platforms 10 feet wide at each side, those at the ends being 10 and 41 feet wide respectively.

That there are also at The Needles—

One office building, size 14 by 30 feet, sided with planed lumber, painted, and covered with shingles.

One storeroom, size 14 by 48 feet, sided with planed lumber, painted, and covered with shingles.

One transfer shed for freight, size 20 by 500 feet, built of rough lumber, painted and covered with shingles.

One engine-house of 14 stalls, built of planed lumber, painted, and covered with galvanized iron.

One

The Needles station continued.

One coal shed, size 62x216 feet, built of rough lumber and roofed with galvanized iron.

One water tank of 50,000 gallons capacity, supplied from a well by steam pump through pipe 3,637 feet long.

One turntable of wrought iron, with 2,198 feet of track, including radial tracks from turntable to engine-house.

One siding 2,795 feet long, with a good switch at each end.

One siding 2,346 feet long, with a good switch at each end.

One siding 2,105 feet long, with a good switch at each end.

One siding 1,833 feet long, with a good switch at each end.

One siding 1,430 feet long, with a good switch at each end.

One siding 1,406 feet long, with a good switch at each end.

One siding 1,334 feet long, with a good switch at each end.

One siding 938 feet long, with a good switch at each end.

One siding 758 feet long, with a good switch at each end.

One siding 506 feet long, with a good switch at each end.

One siding 328 feet long, with a good switch at each end.

One siding 969 feet long, with a good switch at one end.

One siding 853 feet long, with a good switch at one end.

One siding 735 feet long, with a good switch at one end.

One siding 625 feet long, with a good switch at one end.

Also branch track to steamer landing on the Colorado river 3,054 feet long, connected with the main track with a good switch, and also side track to pumphouse (near river), length 570 feet, connected to the branch track with a good switch.

Also one pumphouse (at end of branch track to river), size 18 by 24 feet, sided with planed lumber and covered with shingles.

That in addition to the sidings described above, at Daggett, Fenner, and The Needles, there are others, situated as follows, viz:

That there are at Yucca—

Two sidings, each 2,130 feet long, with a good switch at each end.

Also one water tank of 50,000 gallons capacity, supplied from a well by steam pump.

One pump-house, size 19 x 21 feet, with wing 8 x 11 feet, sided with planed lumber, painted, and covered with shingles.

One coal platform, size 17 by 30 feet.

That there are at Hinckley—

Two sidings, each 2,070 feet long, with a good switch at each end.

One pump-house, size, 18 by 24½ feet, sided with planed lumber, painted, and covered with shingles.

One water tank of 50,000 gallons' capacity, supplied from a well by a steam pump.

That there are at Newberry—

Two sidings, each 1,999 feet long, with a good switch at each end.

One pump-house, size 18 by 24 feet, sided with planed lumber, painted, and covered with shingles.

Two water tanks of 50,000 gallons' capacity each, supplied from a spring by steam pump thro—— a pipe 1,887 feet long.

That at Kramer there is one siding 2,187 feet long, with a good switch at each end.

That at Harper there is one siding 2,041 feet long, with a good switch at each end.

That at Waterman there is one siding 2,039 feet long, with a good switch at each end.

That at Haslett there is one siding 2,070 feet long, with a good switch at each end.

That at Lavic there is one siding 443 feet long, with a good switch at one end.

That at Ludlow there is one siding 1,997 feet long, with a good switch at each end.

Also one siding 914 feet long, with a good switch at one end.

Also one coal bin, size 28 by 84 feet.

That at Ash Hill there is one siding 2,359 feet long, with a good switch at each end.

That at Siberia there is one siding 1,858 feet long, with a good switch at each end.

That at Bagdad there is one siding 2,156 feet long, with a good switch at each end.

That at Amboy there are two sidings, viz: one 2,177 feet long and one 2,341 feet long, with a good switch at each end, and one turntable, with 600 feet of track, connected by a good switch with the main track.

That at Bristol there is one siding 2,498 feet long, with a good switch at each end.

That at Cadiz there is one siding 2,057 feet long, with a good switch at each end.

That at Danby there is one siding 1,915 feet long, with a good switch at each end.

That at Edson there is one siding 2,296 feet long, with a good switch at each end.

That at Goffs there are—

One siding, 2,608 feet long, with a good switch at each end.

One siding, 2,371 feet long, with a good switch at each end.

One turntable, with 600 feet of track, connected with main track by a good switch.

That at Homer there is one siding 1,968 feet long, with a good switch at each end.

That at Ibex there is one siding 1,980 feet long, with a good switch at each end.

That at Java there is one siding 2,009 feet long, with a good switch at each end.

That no machine or repair shops have been yet erected, as those at Tulare and at other points on line heretofore reported upon are sufficient for present requirements, but we are informed by the directors that when additional accommodation in machine or repair shops shall be needed it will be at once provided.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are used on the entire line of its railroad, which includes this 242 507-1000 miles sections, viz:

Locomotives.

No.	Diameter of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Makers.
	Inches.	Inches.	Tons.	
1	54	11 x 15	16	Danforth, Cooke & Co.
2	60	14 x 22	25	Norris.
3	60	14 x 22	25	Norris.
4	60	14 x 22	25	Danforth, Cooke & Co.
5	60	14 x 22	25	" "
6	60	16 x 24	30	Booth & Co.
7	60	16 x 24	30	"
8	48	14 x 18	18	"
9	66	17 x 22	32	Danforth, Cooke & Co.
10	60	18 x 24	34	" "
11	66	15 x 24	29	William Mason.
12	60	15 x 24	30	McKay & Aldus.
13	60	16 x 22	30	Norris.
14	60	15 x 22	26	Danforth, Cooke & Co.
15	60	15 x 24	30	McKay & Aldus.
16	60	16 x 22	31	" "
17	60	14 x 24	26	Norris.
18	54	15 x 22	27	McKay & Aldus.
19	56	15 x 22	30	McQueen, Schenectady.
20	60	16 x 24	34	Baldwin.
21	60	16 x 24	32.2	McQueen, Schenectady.
22	60	16 x 24	32.2	" "
23	60	16 x 24	32.2	" "
24	60	16 x 24	32.2	" "
25	60	16 x 24	32.2	" "
26	60	17 x 24	32.2	" "
27	60	17 x 24	32.2	" "
28	60	17 x 24	32.2	" "
29	60	16 x 24	32.2	" "

Locomotives—Continued.

No.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
	Inches.	Inches.	Tons.	
30	54	18 x 24	36	Danforth, Cooke & Co.
31	62	12 x 22	20	McQueen, Schenectady.
32	62	14 x 22	25	" "
33	56	17 x 24	33	C.P.R.R., Sacramento.
34	62	12 x 22	20	McQueen, Schenectady.
35	54	18 x 24	36	" "
36	54	18 x 24	36	" "
37	54	18 x 24	39.2	" "
38	54	18 x 24	39.2	" "
39	54	18 x 24	39.2	" "
40	54	18 x 24	39.2	" "
41	54	18 x 24	39.2	" "
42	54	18 x 24	39.2	" "
43	54	18 x 24	39.2	" "
44	54	18 x 24	39.2	" "
45	60	17 x 24	33	" "
46	60	17 x 24	33	" "
47	60	17 x 24	33	" "
48	66	18 x 24	37.2	" "
49	66	18 x 24	37.2	" "
50	60	18 x 24	40.2	" "

Locomotives—Continued.

No.	Diameter of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Makers.
	Inches.	Inches.	Tons.	
51	54	20 x 30	62	Cooke Loco. & Mach. Co.
52	54	20 x 30	62	" "
53	54	20 x 30	62	" "
54	54	20 x 30	62	" "
55	54	20 x 30	62	" "
56	54	20 x 30	62	" "
57	54	20 x 30	62	" "
58	54	20 x 30	62	" "
59	54	20 x 30	62	" "
60	54	20 x 30	62	" "
61	54	20 x 30	62	" "
62	54	20 x 30	62	" "
63	54	20 x 30	62	" "
64	54	20 x 30	62	" "
65	54	20 x 30	62	" "
66	54	20 x 30	62	" "
67	54	20 x 30	62	" "
68	54	20 x 30	62	" "
69	54	20 x 30	62	" "
70	54	20 x 30	62	" "
71	54	20 x 30	62	" "
72	54	15 x 22	28	C.P.R.R., Sacramento.

Cars.

2	parlor.
1	hotel.
1	sleeping.
57	first-class passenger.
24	second-class passenger and smoking car.
18	emigrant.
3	mail and express.
10	express and baggage.
2	combination mail, baggage, and express.
2	combination passenger and baggage.
41	box.
8	stock.
343	flat.
1,258	combination.
18	caboose.
5	officers.
46	dump.
18	sail.
165	hand.
118	push.
4	iron.
7	lumber.

Total, 2,151 cars.

The locomotives and cars enumerated above are sufficient for present business and requirements, as this divi-

sion of two hundred and forty-two 507-1000 (242.507) miles runs thro' a country unsettled and undeveloped, affording but little, if any, present additional business to the road. It may be assumed that when additional rolling stock shall be required it will be immediately obtained.

That said two hundred and forty-two 507-1000 (242.507) miles of railroad and telegraph line are constructed as near as may be on the line specified in the "joint resolution" concerning the Southern Pacific Railroad of California, approved June 28, 1870, towit, "on the route indicated by the map filed by the Southern Pacific Railroad Company in the department of the interior on the third of January, 1867."

That said section of railroad and telegraph line or any part thereof has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That these sections of railroad and telegraph line were completed and equipped on the eighteenth day of April, A. D. 1883, and that both are first class.

That the telegraph line is constructed as follows: Not less than thirty redwood poles to the mile, size at bottom, 8 by 8 inches; at top, 4 by 5 inches, length, 24 feet; they are set to a depth of 4 feet in the ground. Number

9

9 galvanized iron wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

We recommend the acceptance by the government of the foregoing sections, aggregating two hundred and forty-two 507-1000 (242.507) miles of railroad and telegraph line hereinbefore described.

Respectfully submitted.

ORLANDO O. STEALEY,
W. G. NICHOLAS,
W. W. BURHANS,
United States Railroad Commissioners.

City and County of San Francisco, } —
State of California. }

Orlando O. Stealey, W. G. Nicholas, and W. W. Burhans, being duly sworn severally, each for himself says that he is United States railroad commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

ORLANDO O. STEALEY.
W. G. NICHOLAS.
W. W. BURHANS.

Subscribed and sworn to before me, John Hunt, Judge of the Superior Court in and for the City and County of San Francisco, State of California, this twenty-seventh day of December, A. D. 1884, said Court being a Court of record.

JOHN HUNT,
Presiding Judge of the Superior Court aforesaid.
[Superior Court City and County
of San Francisco, Cal.]

City and County of San Francisco, } ss.
State of California. }

I, William T. Sesnon, County Clerk of the City and County of San Francisco, State of California, and ex officio clerk of the Superior Court thereof (which Court is a Court of record, having a seal), do hereby certify that Hon. John Hunt, whose name is subscribed to the annexed jurat, was at the time of signing the same a presiding judge of the Superior Court in and for said city and county, duly elected, commissioned, and qualified and authorized by law to administer oaths, and full faith and credit are due to all his official acts as such judge.

And I do further certify that I am well acquainted with the handwriting of the said presiding judge, and that the signature to the said annexed jurat is genuine.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Superior Court, at my office, in said city and county, this twenty-seventh day of December, A. D. 1884.

WILLIAM T. SESNON,
County Clerk and ex officio Clerk of the Superior Court.

U. Department of the ————. Received Jan. 7, 1885.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 290. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

Southern District of California, } ss.
United States of America. }

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 290 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 297.

Certificate.

J. M. E. C. G. S.

United States of America.
Department of the Interior.
Washington, D. C., July 29, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed commission is a true copy as the same appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior.

E. W.

[Seal:
Of Department of the Interior.]

APPOINTMENT.

Grover Cleveland, President of the United States of America. To all whom these presents shall come, Greeting:

Know ye, that, reposing special trust and confidence in the integrity, ability, and discretion of George W. Bird, of Madison, Wisconsin, I do appoint him to be a commissioner to examine and report upon twenty and five hundred and fifty-nine one-thousandths miles of railroad and telegraph line constructed by the Southern Pacific Railroad Company, in California, commencing at the end of the ninth section of said railroad heretofore reported upon, said point being in the northwest quarter of section 11, township 20 south, range 17 east (Mount Diablo base and meridian), and extending thence southwesterly, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to hold the said office, with all the rights and emoluments thereunto legally appertaining, unto him, the said George W. Bird, during the pleasure of the President of the United States for the time being.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

In testimony whereof, I have caused these letters to be made patent, and the seal of the department of the Interior to be hereunto affixed.

Given under my hand at the city of Washington, the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and thirteenth.

GROVER CLEVELAND.

[Seal.]

By the President:

WM. F. VILAS,

Secretary of the interior.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 297. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 297, in the case entitled the United States of America, complainants, vs. the Southern Pacific Railroad Company et al., defendants, No. 600, be-

fore Leo Longley, special examiner; and I hereby certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this twenty-eighth day of December, A. D. 1895.

WM. M. VAN DYKE,
Clerk.

[Seal.]

[Endorsed]: Filed December 28. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 298.

Certificate.

J. M. H. C. G. S.

United States of America.
Department of the Interior.

Washington, D. C., July 29, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed commission is a true copy as the same appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior.

E. W.

[Seal:
Of Department of the Interior.]

APPOINTMENT.

Grover Cleveland, President of the United States of America. To all whom these presents shall come, Greeting:

Know ye, that, reposing special trust and confidence in the integrity, ability, and discretion of Allan E. Morrison, of Perry, Iowa, I do appoint him to be a commissioner to examine and report upon twenty and five hundred and fifty-nine one-thousandths miles of railroad and telegraph line, constructed by the Southern Pacific Railroad Company, in California, commencing at the end of the ninth section of said railroad, heretofore reported upon, said point being in the northwest quarter of section 11, township 20 south, range 17 east (Mount Diablo base and meridian), and extending thence southwesterly, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to hold the said office, with all the rights and emoluments thereunto legally appertaining, unto him, the said Allan E. Morrison, during the pleasure of the President of the United States for the time being.

In testimony whereof, I have caused these letters to be made patent, and the seal of the department of the interior to be hereunto affixed.

Given under my hand at the city of Washington, the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and eighty-nine, and of the

Independence of the United States of America the one hundred and thirteenth.

GROVER CLEVELAND.

[Seal.]

By the President:

WM. F. VILAS,

Secretary of the interior.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 298. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 298, in the case entitled the United States of America, complainants, vs. the Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this twenty-eighth day of December, A. D. 1895.

WM. M. VAN DYKE,
Clerk.

[Endorsed:] Filed December 28, 1895. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 299.

Certificate.

J. M. H. C. G. S.

United States of America.
Department of the Interior.

Washington, D. C., July 29, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed commission is a true copy as the same appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the Interior.

E. W.

[Seal:
Of Department of the Interior.]

APPOINTMENT.

Grover Cleveland, President of the United States of America. To all whom these presents shall come, Greeting:

Know ye, that, reposing special trust and confidence in the integrity, ability and discretion of Orlando O. Stealey, of Louisville, Kentucky, I do appoint him to be a commissioner to examine and report upon twenty and five hundred and fifty-nine one-thousandths miles of railroad and telegraph line constructed by the Southern Pacific Railroad Company, in California, commencing at the end of the ninth section of said railroad, heretofore reported upon, said point being in the northwest quarter of section 11, township 20 south, range 17 east (Mount Diablo base and meridian), and extending thence southwesterly, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to hold the said office with all the rights and emoluments thereunto legally appertaining, unto him, the said Orlando O. Stealey, during the pleasure of the President of the United States for the time being.

In testimony whereof, I have caused these letters to be made patent, and the seal of the department of the interior to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and thirteenth.

GROVER CLEVELAND.

[Seal.]

By the President:

WM. F. VILAS,

Secretary of the interior.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 299. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 299, in the case entitled the United States of America, complainants, vs. the Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this twenty-eighth day of December, A. D. 1895.

WM. M. VAN DYKE,
Clerk.

[Seal.]

[Endorsed]: Filed December 28, 1895. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 300.

REPORT OF COMMISSIONERS.

Certificate.

J. I. P. A. M.
M. C. McN.
P. M. S.

United States of America.
Department of the Interior.

Washington, D. C., July 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, with endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting secretary of the interior.
E. W.

[Seal:
Of Department of the Interior.]

Report.

San Francisco, California, April 2, A. D. 1889.

To the Hon. John W. Noble, Secretary of the Interior of the United States of America.

Sir:

We, the undersigned, commissioners of the United States, appointed to examine the seventeenth (17th) section of twenty and five hundred and fifty-nine one-thousandths (20 559-1000) miles of the railroad and telegraph

line of the Southern Pacific Railroad Company, commencing at the end of section nine (9) of the Southern Pacific Railroad, said point of commencement being in the northwest quarter (N. W. ¼) of section eleven (11), township twenty (20) south, range seventeen (17) east, Mount Diablo base and meridian, in the county of Fresno, in the State of California and running thence in a southwesterly direction along said railroad for a distance of twenty and five hundred and fifty-nine one-thousandths (20 559-1000) miles, and terminating in the northeast quarter (N. E.¼) of section twenty-three (23), township twenty-one (21) south, range fourteen (14) east, Mount Diablo base and meridian, in the county of Fresno, in the State of California.

Certify:

That we have carefully examined said section of twenty and five hundred and fifty-nine one-thousandths (20 559-1000) miles of railroad and telegraph line and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the Government should accept as first class.

That in this distance of twenty and five hundred and fifty-nine one-thousandths (20 559-1000) miles there are—

5,850.0 feet of level line.
1,000.0 feet of grade, from 0 to 5 feet per mile.
4,000.0 feet of grade, from 5 to 10 feet per mile.
7,500.0 feet of grade, from 10 to 15 feet per mile.
21,440.7 feet of grade, from 15 to 20 feet per mile.
21,200.0 feet of grade, from 20 to 25 feet per mile.
21,237.3 feet of grade, from 25 to 30 feet per mile.
6,154.3 feet of grade, from 30 to 35 feet per mile.
5,085.9 feet of grade, from 35 to 40 feet per mile.
4,648.9 feet of grade, from 40 to 45 feet per mile.
2,545.2 feet of grade, from 45 to 50 feet per mile.
7,359.0 feet of grade, from 50 to 52.8 feet per mile.
191.0 feet of grade, from 55 to 60 feet per mile.
338.8 feet of grade, from 66 to — feet per mile.

108,551.1 feet or twenty and five hundred and fifty-nine one thousands (20 559-1000) miles.

Maximum grade 66 0-10 feet per mile.

That also in this distance of twenty and five hundred and fifty-nine one thousands (20 559-1000) miles there are:

83,15 of straight line or 76 61/100 per cent. of tangent.

2,30[illegible] " curved line from 0 deg. 00 minutes to 0 deg. 30 minutes.

3,597.8	"	"	"	"	"	1	"	00	"	"	1	"	30	"
1,548.6	"	"	"	"	"	1	"	30	"	"	2	"	00	"
480.0	"	"	"	"	"	2	"	00	"	"	2	"	30	"
955.0	"	"	"	"	"	2	"	30	"	"	3	"	00	"
1,423.7	"	"	"	"	"	3	"	00	"	"	4	"	00	"
1,823.3	"	"	"	"	"	4	"	00	"	"	5	"	00	"
1,781.1	"	"	"	"	"	5	"	00	"	"	6	"	00	"
1,056.7	"	"	"	"	"	6	"	00	"	"	7	"	00	"
420.0	"	"	"	"	"	7	"	00	"	"	7	"	30	"
349.2	"	"	"	"	"	7	"	30	"	"	8	"	00	"
2,930.6	"	"	"	"	"	9	"	30	"	"	10	"	00	"

108,551.1 feet or twenty and 559/1000 (20 559/1000) miles.

Minimum radius, 573 14-100 feet.

Total curvature, 885° 51 18-100.′

Maximum curve, 10° 00.′

There are in the above described line—

11	curves of	0	degrees	30	minutes	each,	aggregate length		2,304.0	feet.
26	"	"	1	"	00	"	"		6,730.0	
37 carried forward										
37 curves brought forward									*9,034.0*	*feet.*
7	curves of	1	degree	30	minutes	each,	aggregate length		3,597.8	"
20	"	"	2	"	00	"	"	"	1,548.6	"
16	"	"	2	"	30	"	"	"	480.0	"
17	"	"	3	"	00	"	"	"	955.0	"
15	"	"	4	"	00	"	"	"	1,423.7	"
25	"	"	5	"	00	"	"	"	1,823.3	"
6	"	"	6	"	00	"	"	"	1,781.1	"
2	"	"	7	"	00	"	"	"	1,056.7	"
14	"	"	7	"	30	"	"	"	420.0	"
1	"	"	8	"	00	"	"	"	349.2	"
7	"	"	10	"	00	"	"	"	2,930.6	"
167	curves						aggregate length		25,400.0	feet.

For system of curves see map and appendix "A."

That all the rail is of American manufacture and of steel of the best quality; that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the rails weigh not less than sixty (60) pounds per lineal yard and the joints are made with two angle plates each, and that the rails are fastened with at least four (4) spikes to each tie; that there is an average of two thousand, six hundred and forty (2,640) ties per mile of split redwood, six (6) by eight (8) inches by eight (8) feet long.

That these twenty and five hundred and fifty-nine one thousands (20 559-1000) miles of railroad are ballasted with a superior quality of sand and gravel of which the road-bed is composed, no better material being found within very many miles of the line of the railroad.

All embankments are fourteen (14) feet wide at grade, with slopes of one and one-half base to one rise.

All excavations are sixteen (16) feet wide at grade with slopes from three-quarters (¾) of one to one and one-half base to one rise. All excavations are of earth or cemented material.

That there is one (1) wooden bridge, on this section of twenty and five hundred and fifty-nine one-thousands (20 559-1000) miles at Pos*ia* creek, three and six-tenths miles from the initial point of this section, consisting of two spans of eighty feet, each resting on piers of timber. This bridge has sixteen feet of trestle approach on the east end and one hundred and twelve feet of trestle approach on the west end.

There are also on this section of twenty and five hun-

dred and fifty-nine one thousandths (20 559-1000) miles, twenty-six (26) trestles having an aggregate length of sixteen hundred and eighty (1,680) feet as follows:

	Length.	No. of spans.	Length of spans
1 pile trestle	.....320 feet	20	16 feet each
1 " "	.....256 "	16	16 " "
1 " "	.....192 "	12	16 " "
1 " "	.....160 "	10	16 " "
1 " "	.....144 "	9	16 " "
1 " "	.....112 "	7	16 " "
5 " "	..... 48 " each	3	16 " "
1 " "	..... 32 "	2	16 " "
14 " "	..... 16 "	1	16 " "

That there are upon this section of twenty and five hundred and fifty-nine one thousandths (20 559-1000) miles, forty (40) culverts as follows:

	Length.	No. of spans.	Length of span
1 pile culvert	.....40 feet	8	5 feet each
1 " "	.....20 "	4	5 " "
5 " "	.....15 " each	3	5 " "
1 " "	.....10 "	2	5 " "
2 " "	.....10 " "		
30 " "	..... 5 " "		

There are also twelve (12) surface box culverts built of pine and redwood timber.

No stone suitable for building purposes could be found within a distance of ten (10) miles from the railroad.

The timber used in the substructure of these trestles, culverts and bridge piers is the most durable the country can afford, being the black or coast redwood or red cedar,

well known on the Pacific Coast as a wood of great durability and resistance to decay; the superstructure being in all cases of Oregon pine.

We are, however, assured by the directors that the culverts, bridge abutments and piers of timber will be built in stone when, and as the same may become necessary, and suitable materials can be found within a reasonable distance of the line of the road.

That there are on this section of twenty and five hundred and fifty-nine one thousandths (20 559-1000) miles, six (6) sidings having an aggregate length of 8,027 feet connected with the main track at each end with good switches and one (1) spur track having a total length of 340 feet, connected with the main track by a similar switch at one end only.

These sidetracks are situated as follows:

Two (2) side tracks at Dathol, 7 0-10 miles from the initial point of this section.

Lengths, 1,441 9-10 feet and 1,201 9-10 feet respectively.

Two (2) side tracks at Coalinga, 15 4-10 miles from the initial point of this section.

Lengths, 1,443 7-10 feet and 1,202 7-10 feet respectively.

Two (2) side tracks and one (1) spur track at Alcalde, 20 4-10 miles from the initial point of this section.

Lengths, 1,518 4-10 feet, 1,218 4-10 feet and 340 feet respectively.

Each of these side tracks is laid with steel rail, of American manufacture, of the best quality, the portion between switch and frog weighing not less than sixty (60) pounds per lineal yard, the remainder of the side track

being laid with rail weighing not less than fifty (50) pounds per lineal yard.

That there are station buildings, turntables and corrals as follows:

At Alcalde.

One combination passenger and freight depot 25x90 feet. This building has platforms 14 feet wide in front, 8 feet wide in rear, 12 feet wide on passenger end and 36 feet wide on freight end.

One stock corral 47x103 feet.

One turntable (wood) 56 feet diameter.

That there are no wood or coal houses on this section of twenty and five hundred and fifty-nine one thousandths (20 559-1000) miles, the fuel for locomotives being taken on from coal platforms at Huron and at other points on the road outside of this section and heretofore reported upon.

That there are no engine house, machine or repair shops on this section of twenty and five hundred and fifty-nine one thousandths (20 559-1000) miles, none being required as those at Tulare and at other points on the line heretofore reported upon, are sufficient for present requirements. We are informed by the directors of the company that when additional accommodation in machine and repair shops shall be needed it shall be at once provided.

That there are section houses for the accommodation of employees as follows:

At Coalinga.

One section-house 16x24 feet, with addition 12x14 feet.

One sleeping-house 14x22 feet.

One cook-house 12x14 feet.

One tool-house 12x16 feet.

All the station and other buildings mentioned above have frames of Oregon pine, sided with redwood lumber and roofs covered with shingles.

The buildings on this section of twenty and five hundred and fifty nine one thousandths (20 559-1000) miles are amply sufficient for the present business of the road. Should its future business require either an extension of the present buildings or the erection of new ones, the directors of the company assure us that they will be supplied in proper time and place.

That there are upon the Southern Pacific Railroad locomotives and cars as follows, viz:

223 locomotives.
234 passenger cars.
27 baggage cars.
25 baggage, mail and express cars.
2 officers' cars.
84 caboose cars.
328 fruit cars.
3,596 box freight cars.
1,083 flat cars.
4 pile-driving cars.
57 hand, section and push cars.

That no special assignment of rolling stock has been made to this section of twenty and five hundred and fifty-nine one thousandths (20 559-1000) miles of said road, but there are in daily use upon said section locomotives and cars sufficient in number for the requirements of its business.

Whenever this section requires either for its commercial business, construction or repair work additional rolling stock it is immediately detailed for such purposes and sent to it from other divisions.

That all the rolling stock above described was procured for this road from the shops of the Central Pacific Railroad Company, in Sacramento, and from the shops of first-class Eastern builders.

That said twenty and five hundred and fifty-nine one thousandths (20 559-1000) miles of railroad and telegraph line are constructed as near as may be on the line specified in the "joint resolution" concerning the Southern Pacific Railroad of California, approved June 28, 1870, to-wit: On the route indicated by the map filed by the Southern Pacific Railroad Company in the department of the interior on the third day of January, 1867.

That said section of railroad and telegraph line or any part thereof has not been constructed on the line of any other railroad route, to aid in the construction of which lands have heretofore (prior to July 27, 1866), been granted by the United States.

That the telegraph line is constructed, as follows and that it is first-class.

Not less than twenty-five (25) redwood poles to the mile, size at bottom 8x8 inches, at top 4x5 inches and twenty-five (25) feet in length; that they are set in the ground to an average depth of four (4) feet.

Number nine (9) galvanized iron wire is used with glass insulators on brackets.

The office instruments are of the very best quality, of the most improved style and are furnished by the best manufacturers.

And we do hereby certify that this section of said railroad and telegraph line was fully completed and equipped prior to the sixteenth day of July, A. D. 1888, and in the manner required by law and is first-class.

And we respectfully recommend the acceptance by the government of said twenty and five hundred and fifty-nine one thousandths (20 559-1000) miles.

GEO. W. BIRD,
ALLAN E. MORRISON,
ORLANDO O. STEALEY.
United States Railroad Commissioners.

State of California,
City and County of San Francisco. } ss.

Geo. W. Bird, Allan E. Morrison and Orlando O. Stealey being duly sworn, severally each for himself says, that he is United States Railroad Commissioner and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

GEO. W. BIRD,
ALLAN T. MORRISON.
ORLANDO O. STEALEY.

Subscribed and sworn to before me, T. K. Wilson, a Judge of the Superior Court in and for the county of San Francisco, State of California, the same being a court of

record, as witness my hand and the seal of said court, this second day of April, A. D. 1889.

T. K. WILSON,
Judge of the court aforesaid.

Superior Court, city and county of San Francisco, Cal.

State of California,
City and County of San Francisco. } ss.

I, Wm. A. Davis, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the Superior Court thereof (which court is a court of record, having a seal) do hereby certify:

That T. K. Wilson, whose name is subscribed to the annexed certificate was, at the time of signing the same, a judge of the Superior Court in and for said city and county, duly elected and qualified and authorized by law to administer oaths, etc., and full faith and credit are due to all his official acts as such.

And I do further certify, that I am well acquainted with the handwriting of the said T. K. Wilson and verily believe that the signature to the said certificate is genuine.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Superior Court, at my office in said city and county, this second day of April, A. D. 1889.

WM. A. DAVIS,
County clerk and ex officio clerk of the Superior Court.

[Endorsed]: Seventeenth section Southern Pacific of California. Ballast—depth not stated. Regulations require depth of 12 to 24 inches. Excavations are of earth

and 16 feet wide at grade. Regulations require depth of 20 feet. Martin L. & R. R. Div.

[Endorsement]: 3-85-89.

[Endorsement]: Seventeenth section Southern Pacific.

Letter of the Secretary.

Department of the Interior.

Washington, October 23, 1889.

Sir:

I have the honor to transmit herewith the report of George W. Bird, Allan E. Morrison and Orlando O. Stealey, appointed by your predecessor on the twenty-eighth day of February, 1889, commissioners to examine and report upon a completed section of the Southern Pacific Railroad Company, consisting of 20.55 miles.

The grant to this company is incorporated in that to the Atlantic & Pacific Railway Company, act of July 27, 1866 (14 Stats. 292), the eighteenth section of which provides:

"That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic & Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and

shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic & Pacific Railroad herein provided for."

This report is predicated upon the fourth section of said act, which reads:

"That whenever said Atlantic & Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the secretary of the interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report, under oath, to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed sections of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid and so on as fast as every twenty-five miles of said road is completed as aforesaid."

Said report appears to be conformable to said section, and therein said commissioners certify that said road, together with the telegraph line, was completed prior to the sixteenth day of July, 1883, in the manner required by law, and recommend the acceptance of the same by the government.

The grade for this section does not exceed the maximum provided for by the rule. As to the other objections, I can see no good reason for not adopting the language of Hon. L. Q. C. Lamar, in his report on the two sections of the California & Oregon Railroad, herewith submitted, and which is quoted in full in my letter relating thereto.

I have examined the report upon this section of the road and upon a fair consideration of the subject advise the acceptance of said section and that for the lands earned by the construction thereof patents be issued to said company, in compliance with the term of the grant thereto.

Your authority to act in the premises is derived from section 4 of the act, where it is provided:

"If it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath to the President of the United States, and patents of land, as aforesaid, shall be issued to said company." Etc.

This would seem upon its face to allow the patents to issue upon the mere fact of the report being made; but the practice has always been that upon the report being made

and recommended by the secretary, the President should act upon the same.

While the act provides that commissioners shall be appointed and report for each twenty-five consecutive miles, yet this provision of the statute heretofore has not been observed by former administrations, as there have been sixteen sections of this road already approved and in no instance has the mileage been exactly twenty-five miles. The sections heretofore approved vary from twenty to one hundred and eighteen and thirty-seven hundredths miles. It is therefore in accordance with this practice that I make this recommendation to you.

If you approve this, you will please so signify on the back of this communication, where the form is prepared.

Most respectfully.

JOHN W. NOBLE,
Secretary.
G. C.

To the President.

9921 Department of the Interior. Received
L. & R. R. Div. Nov. 11, 1889.

[Endorsement]: Department of the Interior. Oct. 23, 1889. John W. Noble, Secretary, submits to the President report of commissioners on the seventeenth section of Southern Pacific Railroad covering 20 559-100 miles.

Approval by the President.

Executive Mansion, Nov. 8, 1889.

The within recommendations are approved.

BENJ. HARRISON.

[Endorsement]: Copy with map and profile to commissioner G. L. O., November 8, '89; also letter to Henry Beard same day.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Defendants' Exhibit No. 300. Leo. Longley, special examiner. Filed. Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 300 in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., deefndants, No. 600, before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this twenty-eighth day of December, A. D. 1895.

WM. M. VAN DYKE,
[Seal] Clerk.

[Endorsed]: Filed Dec. 28, 1895. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 31 A.

Certificate.

A. M.
E. H. H.
W. W. B.

United States of America.
Department of the Interior.

Washington, D. C., Aug. 15, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original, with its endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed, the day and year first above written.

WM. H. SIMS,
Acting Secretary of the Interior.
E. W.

[Seal of department of the interior.]

LETTER.

Office of the Southern Pacific Railroad Company,
No. 54 William Street,
New York, March 22, 1871.

Hon. C. Delano,
Secretary of the Interior,
Washington. D. C.

Sir:

Herewith find a map of the general route of the Southern Pacific Railroad, of California, as near as may be,

authorized by the twenty-third section of an act of Congress, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes," approved March 3, 1871, as adopted by the said Southern Pacific Railroad Company, of California, from a point at or near Tehachapa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river.

Will you please file the map in the office of the commissioner of the general land office in the department of the interior, and cause the lands to be withdrwn from pre-interior, and cause the lands to be withdrawn from pre-cording to the provisions of said act of Congress.

I have the honor to be,

Very respectfully,

Your obedient servant,

CHAS. CROCKER,

President Southern Pacific Railroad Co.

[Endorsements] Southern Pacific. Department of the interior. Received March 24, 1871. Dated March 22, 1871. From Charles Crocker, President Southern Pacific Railroad Company. 54 Willam street, New York. Subject. Files map and asks for withdrawal of lands along the line of said road from Tehachapa Pass by Los Angeles to the Texas Pacific Railroad near the Colorado river. Action. March 27, '71, asked whether the company had conformed to State law. Directed commissioner G. L. O. to withdraw lands and so advise Mr. Crocker. April 3, 1871, registered 1, 310. Filed ——.

[Endorsed]: United States Circuit Court, Ninth circuit. Southern District of California. United States vs.

Southern Pacific Railroad Co. et al. No. 587. Defendants' Exhibit 9A. Leo. Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Defendants' Exhibit 31A. Leo. Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 31A in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, and Defendants' Exhibit No. 9A in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587, before Leo. Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
[Seal] Clerk.

[Endorsed:] Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 31 B.

Certificate.

A. M.
E. H. H.
W. W. B.

United States of America.
Department of the Interior.

Washington, D. C. Aug. 15, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above writen.

WM. H. SIMS.
Acting Secretary of the Interior.
E. W.

[Seal of department of the interior.]

LETTER.

Department of the Interior.

Washington, D. C. April 3, 1871.

Sir:

The twenty-third section of the act to incorporate the Texas Pacific Railroad, and for the other purposes, approved March 3, 1871, authorizes "the Southern Pacific Railroad Company to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river," with the same rights and privileges, and subject to

the same limitations and restrictions as were granted to said Southern Pacific Railroad Company, of California, by the act July 27, 1866.

The accompanying map designating the route of said road from Tehachapa Pass, by way of Los Angeles, to the Colorado river, has been filed by Charles Crocker, Esq., president of the company, with a request that the lands may be withdrawn, as provided in the twelfth section of said act, "from pre-emption, private entry and sale."

You will issue the necessary order for a withdrawal of the lands, within twenty miles, and along the route designated on said map.

Very respectfully,

Your ob't servant,

WALTER H. SMITH,

Acting Secretary

Hon. Willis Drummond,

Commissioner of the general land office.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 587. Defendants' Exhibit No. 9B. Leo. Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 31B. Leo. Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 31B in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, and Defendants' Exhibit No. 9B in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., No. 587 before Leo. Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
[Seal] Clerk.

[Endorsed:[Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 313.

Certificate.

A. M.
E. H. H.
M. C. McN.

United States of America.

Department of the Interior.

Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting Secretary of the Interior.
E. W.

[Seal of department of the interior.]

LETTER OF INSTRUCTIONS.

Department of the Interior.

Washington, D. C., 17 February, 1874.

Messrs. Foulke, Sullivan and Brown. [43-685. Southern Pacific. Examination of fifty miles.]

Gentlemen:

Application having been made by the president of the Southern Pacific Railroad Company, for the examination by commissioners, of an additional section of fifty miles, of the completed line of said company's road, commencing

at or near Fernando, the initial point being in the southwest one-quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at a point in southwest one-quarter section 26, township 1 south, range 9 west, you will, under your appointment by the President of the United States as commissioners, examine and report upon the same.

A map and profile of the road examined will be transmitted with your report. I enclose herewith forms of certificates to be made on such map and profile by the President and chief engineer of the company.

You will be guided in the discharge of your duties by the "circular of instructions for the examination of railroads," dated 28th April, 1871—copy herewith.

The twenty-first section of the act of 27th July, 1866 (14 Stat. 299), fixes your compensation at $10 per day for each day actually and necessarily employed, and 10 cents per mile for each mile actually and necessarily traveled in discharging the duties required of you, which per diem and mileage shall be in full compensation for your services, and must be paid by the company. Duplicates of the receipts given by you, on payment thereof, will be inclosed with the report.

Be pleased to state clearly in your report whether or not this portion of road is in all respects "first class," and whether you recommend its acceptance. Also in-

form the department if any improvement has been made in the ballast of former sections examined.

Very respectfully,

L. M. Foulke, Esq.; Your obedient servant,
San Francisco, Cal.; C. DELANO,
Eugene L. Sullivan, Esq.; Secretary.
Do. Do.; &
Calvin Brown, Esq.;
Mare Island, Cal.
Commr's on Southern Pac. R. R.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 587. Defendants' Exhibit No. 32. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 313. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 313 in the case entitled "The

United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and Defendants' Exhibit No. 32 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587," before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 3.

Certificate.

A. M.
M. C. McN.
E. H. H.

United States of America.
Department of the Interior.

Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting Secretary of the Interior.

[Seal of the Department of the Interior.] E. W.

LETTER OF INSTRUCTIONS.

Department of the Interior,

Washington, D. C.,

1st October, 1875.

Messrs. Foulke,

Brown & Sullivan,

Gentlemen:

49-221

Southern Pac
50 addnl mls
completed

It having been reported by the Vice-President of the Southern Pacific Railroad Company that 50 additional miles of that road are completed and ready for examination by commissioners, you will be pleased to examine it as soon as practicable, reporting result to this department as usual under instructions formerly given. This portion of road commences "at a "point in the N. E. ¼ section 24, T. 1 S., R. "9 W., San Bernardino base and meridian, "and running thence in a southeasterly di-"rection, terminates at a point in the N. "E. ¼ section 27, T. 1 S., R. 9 W., San Ber-"nardino base and meridian, and running "thence in a southeasterly direction, ter-"minates at a point in the S. W. ¼ of sec-"tion 4, T. 3 S., R. 1 W., same base and "meridian.—

Very respectfully,

B. R. COWEN,

Acting Secretary.

Messrs. Foulke,
Brown & Sullivan,
Comrs. Southern Pac. R. R.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 587. Defendants' Exhibit No. 33. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 314. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 314 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and Defendants' Exhibit No. 33 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587," before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true, and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,

[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 315.

Certificate.

A. M.

E. H. H.

M. C. McN.

United States of America.

Department of the Interior.

Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,

Acting Secretary of the Interior.

E. W.

[Seal of Department of the Interior]

TELEGRAM OF INSTRUCTIONS.

Department of the Interior.

Washington, D. C., June 17, 1876.

Telegram 52-139

Foulke, Brown & Sullivan Commrs. — L. M. Foulke, Calvin Brown & Eugene L. Sullivan, Commissioners, San Francisco, California.

So. Pac. R. R. Co. — Proceed to examination of fifty additional miles of branch line of Southern Pacific Railroad.

Z. CHANDLER,
Secretary.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 587. Defendants' Exhibit No. 34. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 315. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office

November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 315 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and Defendants' Exhibit No. 34 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587," before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1895.

WM. M. VAN DYKE,

[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 316.

Certificate.

A. M.
E. H. H.
M. C. M. N.

United States of America.

Department of the Interior.

Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my

name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting Secretary of the Interior.

E. W.

[Seal of Department of the Interior]

LETTER OF INSTRUCTIONS.

Messrs. Foulke, Brown & Sullivan.

55——155

Southern Pacific R. R.

Completion of 50 miles

of branch line.

Department of the Interior,
Washington, D. C.,
6th February, 1877.

Gentlemen:

The President of the Southern Pacific Railroad Company of California has notified this department of the completion of another section of the railroad which they were authorized to build by the twenty-third section of the act approved 3d March, 1871 (16 Stat. 579); said section begins at or near San Fernando, at a point in the N. W. ¼ of sec. 3, T. 2 N., R. 15 W., San Bernardino base and meridian, runs in a northerly direction, and ends at a point in the N. E. ¼ of sec. 17, T. 11 N., R. 12 W., same base and meridian, a distance of 50 miles.

You will proceed to examine said section, under instructions heretofore given you.

Very respectfully,

Messrs. L. M. Foulke, Calvin Brown & E. L. Sullivan, Comrs., San Francisco, Cal.

Z. CHANDLER,
Secretary.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 587. Defendants' Exhibit No. 35. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 316. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 316 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and Defendants' Exhibit No. 35 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587," before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and

affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,
Clerk.

[Seal]

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 317.

Certificate.

A. M.
E. H. H.
M. C. M. N.

United States of America.
Department of the Interior.

Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original with its endorsement, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting Secretary of the Interior.

E. W.

[Seal of Department of the Interior]

APPOINTMENT.

Department of
Oct
27
1877
the Interior.

Executive Mansion,
Washington, D. C., Oct. 27, 1877.

By virtue of the authority vested in the President of the United States by the fourth section of the act approved July 27, 1866 (14 Stat. 292), Eugene L. Sullivan and A. S. Bender of California, and Z. B. Sturgus of Indiana, are hereby appointed commissioners to examine and report to the President of the United States upon the road and telegraph line authorized by the eighteenth section of said act, joint resolution of 28th June, 1870 (16 Stat. 382), and the twenty-third section of the act approved 3d March, 1871 (16 Stat. 579), to be constructed by the Southern Pacific Railroad Company of California.

R. B. HAYES.

[Endorsement]: Southern Pacific Railroad. Department of the interior————Lands and railroads. ———

Received 27 Oct. 1877.
Dated " " 1877.

From the President. Subject: Appoints E. L. Sullivan, A. S. Bender, and Z. B. Sturgis, commissioners to examine Southern Pacific Railroad. Action: 187-- Respectfully referred to the commissioner of the general land office. Commissioners notified October 27, 1877. Registered 2|7, 1893. Chief Clerk.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 587. Defendants' Exhibit No. 36. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 317. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 317 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and Defendants' Exhibit No. 36 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587," before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,

[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 318.

Certificate.

A. M.

M. C. M. N.

E. H. H.

United States of America.

Department of the Interior.

Washington, D. C., Sept. 10, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,

Acting Secretary of the Interior.

E. W.

[Seal of Department of the Interior]

LETTER OF INSTRUCTIONS.

Department of the Interior,

59- 115 Washington, D. C.,

Southern Pac. R. R. 27 October, 1877.

Comrs. instructed.

Messrs. Sullivan, Bender & Sturgus,

Gentlemen:

Application having been made by the President of the Southern Pacific R. R. Co. for the examination by commissioners of one hundred and eighteen and 37-100 miles, of the completed line of said company's road, commencing at a point in the S. W. ¼ of sec. 24, T. 5 S., R. 7 E., San Bernardino base and meridian, and ending at a point in the S. E. ¼ of sec. 26, T. 16 S., R. 22 E., same base and meridian, you have been appointed by the President of the United States, commissioners to examine and report upon the same.

The appointment is made upon condition that you have neither directly nor indirectly any interest in this corporation, nor any connection with or bias for or against it which would interfere with impartial performance of the duties imposed upon you. Be pleased to at once advise this department whether you accept or decline the position. If you accept, the enclosed blank oath must be duly executed and returned. Three commissioners are required to make the examination and sign the report; therefore, if either should decline, the others will not be authorized to act until they are advised of the appointment of another person to fill the vacancy.

A map and profile of the road examined will be transmitted with your report. I enclose herewith forms of certificates to be made on such map and profile by the President and chief engineer of the company.

You will be guided in the discharge of your duties by the "circular of instructions for the examination of railroads," dated 28th April, 1871—copy herewith.

The 21st section of the act of 27th July, 1866 (14 Statutes, 299), fixes your compensation at $10 per day for each day actually and necessarily employed, and 10 cents per mile for each mile actually and necessarily traveled in discharging the duties required of you, which per diem and mileage shall be in full compensation for your services, and must be paid by the company. Duplicates of the receipts given by you on payment thereof, will be inclosed with the report.

On the reception by the department of your letters of acceptance and oaths of office, you will be ordered to proceed with the examination.

A copy of the President's order appointing you commissioners is herewith enclosed.

Very respectfully,

C. SCHURZ,

Secretary.

Messrs. E. L. Sullican,

A. S. Bender,

San Francisco, Cal.

Z. B. Sturgus, Washington.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs.

Southern Pacific Railroad Company et al. No. 587. Defendants' Exhibit No. 37. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Defendants' Exhibit No. 318. Leo Longley, special examiner. Filed November 19, 1895. Wm. M. Van Dyke, Clerk.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the foregoing papers with an original exhibit filed in my office November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 318 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," and Defendants' Exhibit No. 37 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587," before Leo Longley, special examiner; and I certify that said foregoing papers are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this eighth day of May, A. D. 1896.

WM. M. VAN DYKE,

[Seal] Clerk.

[Endorsed]: Filed May 8, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 319.

MAP.

Certificate.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the map and papers hereto annexed with an original exhibit filed in my office this November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 38 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587," and being further described as Defendants' Exhibit No. 319 in the case entitled "The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600," before Leo Longley, special examiner; and I certify that said map and papers hereto annexed are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this nineteenth day of November, A. D. 1895.

WM. M. VAN DYKE,

[Seal] Clerk.

Certificate.

F.
S. S. M. Department of the Interior.
General Land Office.
Washington, D. C., Aug. 8, 1895.

I, E. F. Best, acting commissioner of the general land office, do hereby certify that the annexed copies are true and literal exemplifications of the originals on file, or of record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

E. F. BEST,
Acting Commissioner of General Land Office.
[Seal of Department of the General Land Office.]

Letter.

[Refer in reply to
this initial.]
Address only the
commissioner of the general land office.

Department of the Interior.
General Land Office.
Washington, D. C., Sept. 17, 1874.

Register and Receiver,
Los Angeles, California,
Gentlemen:

The Southern Pacific Railroad Company, of California, having filed a map of definite location of five sections of ten miles each of its branch line, under the act of March

3, 1871, commencing at a point in the northwest one-quarter, section 3, township 2 north, range 15 west, and ending at a point in the northwest one-quarter. section 27, township 1 south, range 9 west, I herewith transmit a diagram of the twenty and thirty miles limits of the land grant in your district, and you will be governed by these limits in the adjustment of said grant.

Please acknowledge the receipt of said diagram.

Very Respectfully,

S. S. BURDETT,

Commissioner.

[Endorsed]: United States vs. Southern Pacific Company. No. 587. Defendants' Exhibit No. 38. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States vs. Southern Pacific Company. No. 600. Defendants' Exhibit No. 319. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

MAP(S) IS/ARE TOO LARGE TO BE FILMED

Defendant's Exhibit No. 320.

Certificate.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the map and papers hereto annexed with an original exhibit filed in my office this November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 39, in the case entitled, The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587, and being further described as defendants' Exhibit No. 320, in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company, et al., No. 600, before Leo Longley, special examiner; and I certify that said map and papers hereto annexed are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this ninteenth day of November, A. D. 1895.

WM. M. VAN DYKE,
Clerk.

[Seal]

Certificate.

F. W. J. M.
S. S. M.

Department of the Interior.
General Land Office.
Washington, D. C., Aug. 8, 1895.

I, E. F. Best, acting commissioner of the general land office, do hereby certify that the annexed copies are true and literal exemplifications of the originals on file, or of record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

E. F. BEST,
Acting commissioner of general land office.

[Seal of department
of the
general land office.

LETTER.

[Refer in reply to
this initial.]
Address only the
commissioner of the general land office.

Department of the Interior.
General Land Office.
Washington, D. C., Dec. 20, 1875.

Register and Receiver,
Los Angeles, California,
Gentlemen:

A duly certified map having been filed in this office in compliance with law, showing the definite location

and construction of the second section of fifty miles of the Southern Pacific Railroad branch line under the act of March 3, 1871, from a point in the northeast one-quarter section 27, township 1 south, range 9 west, where the first fifty mile section ended, to a point in southwest one-quarter section 4, township 3 south, range 1 west, S. B. M., I transmit herewith a diagram showing the twenty and thirty mile limits of the land grant established in accordance therewith. And you are hereby directed to withhold from sale or entry all the odd sections falling within those limits, and not excepted by the granting act. The even sections falling within the definite twenty mile limits will be held at the double minimum price of $2.50 per acre. The withdrawal of the odd sections here directed, and increase in price of the even ones takes effect from Nov. 15, 1875, the date the map was received at this office. Please acknowledge the date of receipt of this letter with diagram.

Very respectfully,

S. S. BURDETT,

Commissioner.

[Endorsed]: United States vs. Southern Pacific Company. No. 587. Defendants' Exhibit No. 39. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States vs. Southern Pacific Company. No. 600. Defendants' Exhibit No. 320. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 321.

Certificate.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the map and papers hereto annexed with an original exhibit, filed in my office this November 19, 1895, said ——— being described as defendants' Exhibit No. 40, in the case entitled, The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587, and being further described as Defendants' Exhibit No. 321, in the case entitled, The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said map and papers hereto annexed are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this nineteenth day of November, A. D. 1895.

WM. M. VAN DYKE,
Clerk.

[Seal]

Certificate.

F. W. J. M.

S. S. M.

Department of the Interior.

General Land Office.

Washington, D. C., Aug. 8, 1895.

I, E. F. Best, acting commissioner of the general land office, do hereby certify that the annexed copies are true and literal exemplifications of the originals on file, or of record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

E. F. BEST,

Acting commissioner of general land office.

[Seal of department
of the
general land office]

LETTER.

[Refer in reply to
this initial.]
Address only the
commissioner of the general land office.

Department of the Interior.

General Land Office.

Washington, D. C., August 19, 1876.

Register and Receiver,
Los Angeles, California,
Gentlemen:

A duly certified map was filed in this office on the twenty-fourth ultimo in compliance with law, showing

the definite location and construction of the third section of fifty miles of the Southern Pacific Railroad, branch line, under the act of March 3, 1871, from a point in the southwest one-quarter, section 4, township 3 south, range 1 west, where the second fifty mile section ended, to a point in the southwest one-quarter, section 24, township 5 south, range 7 east, San Bernardino meridian, which received the approval of the president on the twenty-first of July, 1876, I transmit herewith a diagram, showing the twenty and thirty mile limits of the land grant established in accordance therewith, and you are hereby directed to withhold from sale or entry all the odd sections falling within those limits not already withdrawn, and not excepted by the granting act upon the general route, and to restore to pre-emption and homestead entry the lands heretofore withdrawn, but now falling without the thirty mile limits as definitely fixed.

The even sections falling within the definite twenty mile limits will be held at the double minimum price, but those heretofore held at that price, now falling without will be reduced in price to $1.25 per acre, from the date of the receipt of this letter.

The withdrawal of the odd sections here directed, and increase in price of the even ones, will take effect from the same date.

Be pleased to acknowledge the date of receipt of this letter and diagram.

Very respectfully,

U. J. BAXTER,

Acting commissioner.

[Endorsed]: United States vs. Southern Pacific Company. No. 587. Defendants' Exhibit No. 40. Leo Longley, special examiner. Filed Nov. 20, 1895. Wm. M. Van Dyke, Clerk.

United States vs. Southern Pacific Company. No. 600. Defendants' Exhibit No. 321. Leo Longley, special examiner. Filed Nov. 20, 1895. Wm. M. Van Dyke, Clerk.

MAP(S) IS/ARE TOO LARGE TO BE FILMED

Defendant's Exhibit No. 322.

Map and Letter.

Certificate.

United States of America, }
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the map and papers hereto annexed with an original exhibit filed in my office this November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 41, in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., defendants, No. 587, and being further described as Defendants' Exhibit No. 322, in the case entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company, et al., defendants, No. 600, before Leo Longley, special examiner; and I certify that said map and papers hereto annexed are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this ninteenth day of November, A. D. 1895.

WM. M. VAN DYKE,

[Seal] Clerk.

Certificate.

F. W. J. M.

S. S. M.

Department of the Interior.

General Land Office.

Washington, D. C., Aug. 8, 1895.

I, E. F. Best, acting commissioner of the general land office, do hereby certify that the annexed copies are true and literal exemplifications of the originals on file, or of record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

E. F. BEST,

Acting commissioner of general land office.

[Seal of department
of the
general land office.]

Letter.

[Refer in reply to
this initial.]
Address only the
commissioner of the general land office.

Department of the Interior.

General Land Office.

Washington, D. C., March 27, 1877.

Register and Receiver,
Los Angeles,
California.

Gentlemen:

A duly certified map was filed in this office on the sixth

instant, in compliance with law, showing the definite location and construction of the fourth section, seventy-eight and fifty-nine one-hundredths miles of the Southern Pacific Railroad, branch line, under the act of March 3, 1871, commencing at a point in the northwest one-quarter section 3, township 2 north, range 15 west, and ending at a point in the northeast one-quarter section 17, township 11 north, range 12 west, San Bernardino meridian which received the approval of the President, the first instant.

I transmit herewith a diagram showing the twenty and thirty mile limits of the land grant established in accordance therewith, and you are hereby directed to withhold from sale or entry all the odd sections falling within those limits not already withdrawn, and not excepted by the granting act upon the general route.

The even sections falling within the definite twenty mile limits, will be held at the double minimum price of $2.50 per acre.

The withdrawal of the odd sections here directed, and the increase in price of the even sections will take effect from the date of the receipt of this letter and diagram, of which acknowledgment is respectfully requested.

Very respectfully,

J. A. WILLIAMSON,

Commissioner.

[Endorsed]: United States vs. Southern Pacific Company. No. 587. Defendants' Exhibit No. 41. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

United States vs. Southern Pacific Company. No. 600. Defendants' Exhibit No. 322. Leo. Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 324.

(P. 409, printed report of the commissioner of the general land office, for the year 1875.)

ANNUAL REPORT

of the

COMMISSIONER OF THE GENERAL LAND OFFICE

for the

FISCAL YEAR, ENDING JUNE 30, 1875.

WASHINGTON:

Government Printing Office.

1875.

Synopsis of the Annual Report of the Commissioner of of General Land Office for the Fiscal Year, ending June 30, 1875.

MAP(S) IS/ARE TOO LARGE TO BE FILMED

No. 9.—Statement exhibiting land concessions by acts of Congress to States and corporations, &c.—Continued.

States.	Date of Laws.	Statutes.	Page.	Name of Road.	Mile Limits.	Estimated quantity embraced in the limits of the grant.	Estimated quantity which the company will receive from the grant.	Number of acres certified or patented for the year ending June 30, 1875.	Number of acres certified or patented up to June 30, 1875.
Corporations ...	July 27, 1866 ..	14	292	Southern Pacific	20 and 30	6,000,000.00	3,750,000.00	394,446.09	400,413.42
do	Mar. 3, 1871....	16	579	Southern Pacific from a point at or near Tehachapa Pass to the Texas Pacific Railroad at or near Colorado River	20 and 30	3,520,000.00	3,000,000.00	.....	.....
do	July 27, 1866...	14	292	Atlantic & Pacific..	States 20 and 30; Territories 40 and 50..	42,000,000.00	40,000,000.00	3,744.06	502,835.39

Certificate.

I hereby certify that the foregoing three pages are a full true and correct copy of the original evidence introduced by the defendants in the case of United States vs. Southern Pacific Railroad Company et al., numbered 600 on the docket of the United States Circuit Court, Ninth Circuit, Southern District of California, as Defendants' Exhibit No. 324.

LEO LONGLEY,
Special examiner.

[Endorsed]: United States Circuit Court, Ninth Circuit Court, Southern District of California, United States vs Southern Pacific Railroad Company. No. 600. Defendants' Exhibit No. 324. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. ————, Deputy. United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 587. Defendants' Exhibit No. 43. Leo Longley, special examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. —— Deputy.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GARRIT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and THE COLORADO RIVER IRRIGATION COMPANY, Defendants. } No. 600.

Second Partial Report of Examiner in Chancery.

To the Honorable, the Judges of the Circuit Court of the United States in and for said District:

Pursuant to an order of reference made and entered in the above entitled cause as of the eighth day of April, 1895, whereby it is ordered that the undersigned, as special examiner in chancery, shall take the evidence in the above entitled cause and report the same to the Court, the said special examiner does now submit this, his second partial report, as follows:

That on the eighteenth day of December, 1895, at 10:30 o'clock A. M., the complainant appeared at the office of the clerk of the United States Circuit Court, in the city of Los Angeles, California, by its solicitor Joseph H. Call, Esquire, and the defendants by their counsel Walter J.

Trask, Esquire; and thereupon the complainant introduced in evidence exhibits numbered Plaintiff's Exhibits 55 to 77, inclusive, and the defendants introduced in evidence exhibits numbered A. 1, A. 2 and A. 3. And thereupon the further taking of testimony was adjourned subject to further notice.

And the said record, accompanying this report, contains all of the evidence and exhibits introduced in said cause by the respective parties between the date of my first partial report and the date hereof; all of which with the exhibits introduced, is herewith returned to the Court.

LEO LONGLEY,
Special examiner in chancery.

December 28, 1895.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 600.

Testimony.

Testimony on behalf of plaintiff, taken by consent, before Leo Longley, special examiner and stenographer, in pursuance of notice, this eighteenth day of December, 1895, at 10:30 o'clock A. M. Present:—Joseph H. Call,

Esq., special assistant United States attorney, for the plaintiff; Walter J. Trask, Esq., of counsel, for defendants.

Mr. CALL.—At the last hearing before Leo Longley, special examiner and stenographer, plaintiff offered in evidence by stipulation a map showing the withdrawal for the Atlantic & Pacific Railroad from the Colorado river to range 7 east, S. B. M., and I now request said exhibit be marked Plaintiff's Exhibit 55.

Mr. TRASK.—That has already been introduced.

Mr. CALL.—That is a map that has been introduced, but I believe has not been formally marked.

Mr. CALL.—In pursuance of an order of Court heretofore entered in this case, and in pursuance of an agreement made with the attorneys for the defendants at the hearing before Stephen Potter, special examiner, as shown by his record, I desire to offer in evidence certain depositions and exhibits from other cases in this court between the United States and the Southern Pacific Railroad.

I offer in evidence a certified copy of the letter of the Texas & Pacific Railroad Company to the secretary of the interior, dated April 6, 1872, marked Defendants' Exhibit 78 before Lamme, standing examiner, in the case of United States vs. Southern Pacific Railroad Company, numbered 184 on the docket of this Court, said letter being in reference to Atlantic & Pacific Railroad maps, and now marked Plaintiff's Exhibit 56.

Mr. TRASK.—To which the defendants object on the ground it is incompetent, irrelevant and immaterial, and not in rebuttal.

Mr. CALL.—I offer in evidence a certified copy of a letter of the commissioner of the general land office to the secretary of the interior, dated April 11, 1872, marked Defendants' Exhibit 81 before Lamme, examiner, in said case 184, and now marked Plaintiff's Exhibit 57.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence a certified copy of the record book of the general land office, showing maps filed by the Atlantic & Pacific Railroad Company, now marked Plaintiff's Exhibit 58.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the letter of the attorney of the Atlantic & Pacific Railroad Company to the secretary of the interior, dated March 8, 1872, marked Exhibit 118 in the case of United States vs. Southern Pacific Railroad Company, numbered 68 on the docket of this Court, and now marked Plaintiff's Exhibit 59.

Mr. TRASK.—To which defendants object on the same ground.

Mr. CALL.—I offer in evidence the letter of same party to same party, dated August 15, 1872, marked Exhibit 119 in said case 68, and now marked Plaintiff's Exhibit 60.

Mr. TRASK.—To which the defendants object on the same ground.

Mr. CALL.—I offer in evidence a certified copy of a map on file in the general land office, showing the constructed Southern Pacific Railroad from San Fernando southeasterly, marked Exhibit 38 before Lamme, examiner, in the case 184, now marked Plaintiff's Exhibit 61.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer another map from the general land office, showing another constructed section of the Southern Pacific Railroad, marked Exhibit 39 before Lamme, examiner, in case 184, now marked Plaintiff's Exhibit 62.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the deposition of George W. Coffin, taken in said case 184, now marked Plaintiff's Exhibit 63.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the deposition of H. W. Gardiner, taken on behalf of plaintiff in said case 184, with the exhibits thereto attached and documents therein offered, now marked Plaintiff's Exhibit 64.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence deposition of Silas W. Lamoreux, with the exhibits thereto attached, in said case 184, now marked Plaintiff's Exhibit 65.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the deposition of Thomas F. Laycock, in said case 184, with the accompanying and attached exhibits, now marked Plaintiff's Exhibit 66.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the deposition of Edward Massey, in said case 184, with the exhibits and evidence accompanying the same, now marked Plaintiff's Exhibit 67.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the deposition of William J. McGee, in said case 184, with annexed exhibits, now marked Plaintiff's Exhibit 68.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the report of George W. Drew, notary public, filed in this court January 26, 1894, with the accompanying depositions, evidence, and exhibits, introduced and taken before him in said case 184, now marked Plaintiff's Exhibit 69.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the report of George W. Drew, notary public, filed in this court April 6, 1894, with the accompanying depositions, evidence, and exhibits, introduced and taken before him in said case 184, and now marked Plaintiff's Exhibit 70.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the letter of Secretary Browning to the commissioner of the general land office, dated January 3, 1867, transmitting the map of preliminary route of Southern Pacific Railroad, from San Francisco to the Colorado river, now marked Plaintiff's Exhibit 71.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the letter of Secretary Browning to the commissioner of the general land office, dated March 19, 1867, ordering a withdrawal of lands upon the map of January 3, 1867, but reserving future consideration as to conflict with route of other railroads, now marked Plaintiff's Exhibit 72.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the letter of Secretary Browning to the commissioner of the general land office, dated July 14, 1868, revoking the withdrawal ordered on

the map of 1867 and restoring lands to entry, marked Plaintiff's Exhibit 73.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the letter of Secretary Browning to the commissioner of the general land office, dated August 20, 1868, suspending proceedings upon the order of July 14, preceding, as to lands south of San Jose, marked Plaintiff's Exhibit 74.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the letter of Secretary Cox to C. P. Huntington, dated February 21, 1870, refusing to approve construction of Southern Pacific Railroad on the unauthorized route of 1867, marked Plaintiff's Exhibit 75.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the letter of Secretary Cox to commissioner of general land office, dated November 11, 1869, rejecting the map of 1867 and ordering restoration of lands, marked Plaintiff's Exhibit 76.

Mr. TRASK.—Same objection.

Mr. CALL.—I offer in evidence the letter of Secretary Cox to the commissioner of the general land office, dated December 15, 1869, suspending restoration of lands ordered by letters of November 2 and 11, 1869, now marked Plaintiff's Exhibit 77.

Mr. TRASK.—Same objection.

Testimony on behalf of defendants, taken by consent, before Leo Longley, special examiner and stenographer, in pursuance of notice, this eighteenth day of December, 1895, at 10:30 o'clock, A. M. Present: Joseph H. Call,

Esq., special assistant United States attorney, for the plaintiff; Walter J. Trask, Esq., of counsel for defendants.

Mr. TRASK.—Defendants offer in evidence certified copy of letter from Henry Beard addressed to Honorable J. Q. C. Lamar, secretary of the interior, inclosing copy of the company's resolution of May 16, 1871, accepting the branch line grant and stating the reasons for filing the same at that time, which is on file in the case of United States against Southern Pacific Railroad Company, numbered 587 on the docket of this court, marked Defendants' Exhibit A 1, and now marked Defendant's Exhibit A 1, in this case.

Mr. CALL.—The defendants' time for taking testimony having expired, I consent that this testimony may be taken, with the understanding that no objection be made to the time or order of taking of plaintiff's testimony; but I object to the introduction of this exhibit upon the ground that the same is incompetent, immaterial, and irrelevant.

Mr. TRASK.—Defendants offer in evidence certified copy of the resolution of the company, passed May 16, 1871, accepting the branch line act, which was filed with Mr. Beard's letter mentioned, on file in said suit 587 and numbered Defendants' Exhibit A 2 therein, and now marked Defendants' Exhibit A 2 herein.

Mr. CALL.—Same objection and same consent.

Mr. TRASK.—Defendants offer in evidence certified copy of letter from Charles N. Fox to the secretary of the interior, inclosing a copy of the resolution of November 26, 1866, accepting the main line grant, and of the reso-

lution attached, under the same certificate, which accompanied that letter, and ask that the same be marked Defendants' Exhibit A 3.

Mr. CALL.—I make the same objection and same statement in regard to taking this testimony as above.

The further taking of testimony herein is adjourned subject to further notice.

[Endorsed]: Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk, ———, Deputy.

Plaintiff's Exhibit No. 56.

Certificate.

M. C. P. A. M.
J. T. S.
P. M. S.

(Vignette.)

United States of America.
Department of the Interior.
Washington, D. C., Nov. 7, 1893.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the original on file in this department and of the action endorsed thereon.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

WM. H. SIMS,
Acting Secretary of the Interior.
(J. D.)

[Seal]

LETTER.

(Copy.)

President's Office, A. & P. R. R. Co.

Boston, April 6, 1872.

Hon. C. Delano, Secretary of the Interior.

Sir:

The Atlantic & Pacific Railroad Company has filed its maps delineating its route through the Indian territory, Northern Texas, New Mexico, Arizona, and portions of California to San Francisco. The company has requested you to order the lands to be withdrawn appurtenant to the line so far as the maps have been filed. Reiterating the request, I respectfully ask the department to inform me whether the line as filed is approved, and whether orders have been issued to withdraw such lands granted to the company under the provisions of the act of Congress relating to the Atlantic & Pacific Railroad, approved July 27, 1866.

I especially request you to decide whether the Atlantic & Pacific Railroad Company has not the right to construct its road on the line as filed to San Francisco, in view of the operations of the company requiring a large outlay of capital in the construction of its road in California which its stockholders would not wish to jeopardize.

Very respectfully,

Your obedient servant,

FRANCIS B. HAYES,

Pres't of Atlantic & Pacific R. R. Co.

[Endorsed]: 10th April, 1872. Referred to commissioner of the general land office for report to this office. (Wrapper and enclosure to be returned.) Reported 11th April, 1872. See letter to Mr. Hayes same date.

United States Circuit Court, Southern District of California, United States of America, vs. Southern Pacific Railroad Company et al. 184. Master's and examiner's Exhibit No. 78. E. H. Lamme, master and examiner in chancery for defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk. ———, Deputy.

United States Circuit Court, Southern District California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 56. Leo Longley, special examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk. ———, Deputy.

Plaintiff's Exhibit No. 57.

Certificate.

M. N. (4-207.) W. J. M.

"F."

Department of the Interior.

General Land Office.

Washington, D. C., November 7, 1893.

I, Edw. A. Bowers, acting commissioner of the general land office, do hereby certify that the annexed copy of a letter, dated April 11, 1872, from the commissioner of the general land office to the secretary of the interior, reporting in the matter of a withdrawal of lands for the Atlantic & Pacific Railroad, is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

EDW. A. BOWERS,
Commissioner of the general land office.

[Seal]

LETTER.

Department of the Interior.
General Land Office.

April 11th, 1872.

Hon. C. Delano, Secretary of Interior,
Sir:

I have the honor to acknowledge the receipt, with request for report, of letter of Francis B. Hays, Esq., president of Atlantic & Pacific Railroad Company to the department relative to a withdrawal of lands for said railroad in California, and asking the decision of the department as to the right of the company to construct its road on the line as filed to San Francisco.

The act of incorporation passed July 27, 1866 (Stat., vol. 14, page 292), authorized the construction of the road from Springfield, Missouri, by the way of certain points to the Colorado river at such point as may be selected by said company for crossing "thence by the most practicable and eligible route, to the Pacific."

The lines of road, as filed by the company, with your letter of 7th ult., indicate the general direction of the line and show San Francisco as the objective point on the Pacific Coast, and from the general contour of the country, indicate the most practicable and eligible route to the principal commercial port of the Pacific.

Maps for the withdrawal of lands are being prepared and unless the secretary sees objections, the withdrawals will be directed so soon as the maps are completed.

I am, sir,

Very respectfully,

W. W. CURTIS,

Acting Commissioner.

[Endorsed]: United States Circuit Court, Southern District of California. United States of America vs. Southern Pacific Railroad Company et al. 184. Master and Examiner's Exhibit No. 81. E. H. Lamme, master and examiner in chancery for defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk. ———, Deputy.

United States Circuit Court, Southern District California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 57. Leo Longley, special examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk. ———, Deputy.

Plaintiff's Exhibit No. 58.

Certificate.

M. N. (4-207.) S. S. M.

"F."

Department of the Interior.

General Land Office.

Washington, D. C., October 4, 1895.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed abstract copy of a record book of maps is a true and literal exemplification of the original in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
Commissioner of the general land office.

[Seal]

INDEX.

Maps of definite location and construction filed in the general land office, under acts of Congress, to States and corporations for railroad purposes.

Department of the Interior.
General Land Office.
Division "F."
Willamette Valley & Cascade Mt.
Wagon Rd.
Oregon Central Military Road.
The Dalles Military Road.
Atlantic & Pacific Railroad.

Date of laws. July 27, 1866 (Stat. 14, p. 292); April 20, 1871 (Stat. 17, p. 19); July 6, 1886.

Maps Filed by the Company.

Map designating the line of route from Springfield, Missouri, to the western boundary of the State. Adopted by board of directors of company, Nov. 20, 1866. Received in general land office Dec. 17, 1866, with letter from secretary of interior, dated Dec. 15, 1866.

Map 1. Tube 1.

Map of definite location from Springfield to Neosho, Missouri. Adopted by board of directors, July 7, 1870, duly certified by the officers of the company. Received

in general land office with letter from secretary of interior, dated Dec. 10, 1870. Map 2. Tube 1.

Map of designated route from Neosho, Missouri, to Prairie Summit in Indian Territory, duly certified by president of company. Received in general land office Sept., 1871, with tubes. Map 3. Tube 1.

Map of definite location from Missouri State line to mouth of King Fisher creek in Indian territory, duly certified by the officers of the company. Received in general land office Dec. 2, 1871, with letter from secretary of interior, dated Dec. 1, 1871. Map 4. Tube 1.

Duplicate maps of branch line as definitely located from Van Buren, near the western boundary of Arkansas, to a point in the valley of Canadian river duly certified by the officers of company. Received in general land office Dec. 2, 1871, and Feb. 2, 1872, with letters from secretary of interior, dated Dec. 1, 1871, and Feb. 6, 1872.

Map 5 A. Map 5 B. Tube 1.

Atlantic & Pacific Railroad.

Map of definite location of branch line from a point on Canadian river near the 96° west longitude, to an intersection with main line, in valley of Canadian river, duly certified by officers of the company. Received in general land office Feb. 7, 1872, with letter from secretary of interior dated Feb. 6, 1872. Map 6. Tube 1.

Map of definite location of main line from mouth of King Fisher creek, Indian territory, to the eastern boundary of New Mexico, duly certified by officers of company. Received in general land office, Feb. 7, 1872, with letter from secretary of the interior dated Feb. 6, 1872.

Map 7. Tube 1.

Map of definite location through the territory of New Mexico, duly certified by officers of the company. Received in general land office March 12, 1872, with letter from secretary of interior dated March 9, 1872.

Map 8. Tube 1.

Map of definite location through the territory of Arizona duly certified by officers of company. Received in general land office March 12, 1872, with letter from secretary of interior dated March 9, 1872.

Map 9. Tube 1.

Map of definite location from San Francisco to San Miguel, California, in township 25 south, range 12 east, duly certified by officers of company. Received in general land office March 12, 1872, with letter from secretary of interior dated March 9, 1872. Map 10. Tube 1.

Map of definite location through the county of Los Angeles and part of San Bernardino, California, duly certified by the officers of company. Received in general land office March 12, 1872, with letter from secretary of interior dated March 9, 1872. Map 11. Tube 1.

Atlantic & Pacific Railroad.

Two maps of definite location, one from San Miguel Mission, California, in township 25 south, range 12 east, Mount Diablo meridian, to the Los Angeles county line and the other from a point in township 7 north, range 7 east, San Bernardino meridian, San Bernardino county to the Colorado river, duly certified by officers of company. Received in general land office with letter of secretary of interior, dated April 16, 1874.

Map 12 A. Map 12 B. Tube 1.

Map of amended definite location. Branch line in Indian territory, filed in this office with letter from J. A. Wiliamson dated Nov. 9, 1883. It was submitted to secretary with letter of Nov. 28, 1883. Accepted so far as it is amendatory of the original route of said line which ran north of Canadian river and through the Creek and Cherokee county. Map 13. Tube 1.

Atlantic & Pacific Railroad. 1. Station plat situated in the northwest one-quarter and northeast one-quarter of section 6, township 22 north, range 5 west, Arizona, containing 40 acres approved under act July 27, 1866, Sept. 7, 1887. Copy sent to R. & R., Prescott, Arizona, Nov. 25, 1887. Map 14. Tube 1.

Rejected map:

Plat designating the line of the Atlantic & Pacific Railroad from the point selected by the company for crossing the Colorado river, by the route deemed by the company the most practicable and eligible to the Pacific Ocean. Oct. 1, 1869. This map is filed, with letter H — 79936. Francis B. Hayes, president Atlantic & Pacific Railroad Company. Boston, Mass., Oct. 25, 1869.

For map and letter, see "Atlantic & Pacific files."

Atlantic & Pacific Railroad.

Section Maps of Constructed Road.

Sections.	Mile Posts.	No. of Miles in Section.	When appd by President.	Map.	Tube.
1st.	1st to 25th.....	25	October 4, 1870.....	5	2
2nd.	25th to 50th...	25	October 4, 1870.	6	2
3rd.	50th to 75th...	25	January 31, 1871.....	7	2
4th.	75th to 100th..	25	December 6, 1871.....	8	2
5th.	100th to 125th.	25	December 6, 1871.....	9	2
6th.	125th to 150th.	25	December 14, 1882.....	4*A*	2
7th.	150th to 175th.	25	December 14, 1882.....	4*B*	2
	Western Division				
1 & 2	1st to 50th....	50	December 17, 1880.....	1	2
3 & 4	50 to 100.....	50	April 18, 1881.....	2	2
5,6,7 & 8	100 to 200.....	100	January 5, 1882.....	3 A, B, C & D.	2
9	200 to 225.....	25	December 14, 1882.....	10	2
10	225 to 250.....	25	" " "	1	3
11	250 to 275.....	25	" " "	2	3
12	275 to 300.....	25	" " "	3	3
13	300 to 325.....	25	" " "	4	3
14	325 to 350.....	25	" " "	5	3
15	350 to 375.....	25	" " "	6	3
16	375 to 400.....	25	" " "	7	3
17	401 to 425.....	25	October 30, 1883.....	8	3
18	426 to 450.....	25	" " "	9	3
19	451 to 475.....	25	" " "	10	3
20	476 to 500.....	25	" " "	11	3
21	501 to 525.....	25	" " "	12	3
22	526 to 550.....	25	" " "	13	3

Atlantic & Pacific Railroad.

Map and profile of constructed sections one and two—western division from a point in township 8 north, range 2 east, near Isleta, New Mexico. Filed in general land office Dec. 18, 1880—with letter from secretary of interior, dated Dec. 17, 1880. Map 1. Tube 2.

Map and profile of constructed third and fourth sections of twenty-five miles each. Filed in general land office April 20, 1881, with letter from secretary of interior, dated April 19, 1881. Map 2. Tube 2.

Four maps and profiles of constructed fifth, sixth, seventh, and eighth sections of twenty-five miles each of western division. Filed in general land office January 9, 1882, with letter from secretary of interior dated January 7, 1882. Maps 3, A B C D. Tube 2.

Two maps and profiles of constructed sixth and seventh sections of twenty-five miles each central division Indian territory, and eight maps of constructed sections (25 miles each) western division. Filed in general land office Dec. 19, 1882, with letter from secretary of interior, dated Dec. 16, 1882. Maps 4 A and B. Tube 2.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 58. Leo Longley, special examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk. ————, Deputy.

Plaintiff's Exhibit No. 60.

Certificate.

"F" No. 68 (4-225) M. N.
W. C. E.

Department of the Interior.
General Land Office.
Washington, D. C., Feb'y 8, 1890.

I, Lewis A. Groff, commissioner of the general land office, do hereby certify that the annexed copy of letter, dated August 15, 1872, by N. L. Jeffries, filing certain maps of location of the Atlantic & Pacific Railroad, is a true and literal exemplification of the same as it appears of record in this department.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of the General Land Office.

[Seal]

LETTER.

Washington, D. C., August 15, 1872.

To the Honorable, the Secretary of the Interior.

Sir:

For, and on behalf of the Atlantic & Pacific Railroad Company, I have the honor to file herewith two maps designating the line of its railroad in the county of San Bernardino, State of California, and to the east side of the Colorado river in Arizona Territory; and the line of its

road in the State of California between the San Miguel Mission and the Los Angeles county line.

I have the honor to request an acknowledgment of the receipt of said maps by the department.

Very respectfully,

N. L. JEFFRIES,

Attorney for Atlantic & Pacific Railroad Company.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company. No. 68. Master's Exhibit 119. Filed March 20, 1890. Chas. L. Batcheller, master and examiner in chancery. Filed March 22, 1890. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Southern District of California. Southern Pacific Railroad Company vs. Hutton et als. 305. Examiner's Exhibit No. 25. E. H. Lamme, master and examiner in chancery. Plaintiff's Exhibit No. 26. E. H. Lamme, examiner. 25. E. H. L.

United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et al., No. 600. Plaintiffs' Exhibit No. 60. Leo Longley, special examiner. Filed December 30, 1895. Wm. M. Van Dyke, Clerk. ——— ———, Deputy.

Plaintiff's Exhibit No. 64.

(Deposition of HARRISON W. GARDINER on behalf of complainants in the case of United States v. Southern Pacific Railroad Company et al., No. 184, before Asa P. French, notary public at Boston, Mass.)

Direct Examination by Mr. CALL.

Q. Have you in your possession and under your control as secretary of the Atlantic & Pacific Railroad Company the record of meetings of the board of directors of that company and meetings of the executive committee and stockholders? A. Yes, sir.

Q. Is that contained in one volume or more?

A. It is contained in three separate volumes, numbered 1, 2 and 3.

Q. Does that record show the action of the board of directors of the Atlantic & Pacific Railroad Company and of the executive committee of that company concerning the maps filed by the company in the interior department in the year 1872.

A. There are certain votes in record book of that period as to the adoption and filing of such maps with the secretary of the interior.

Q. Will you produce the record referred to?

Witness produces record.

Q. Please read in evidence the record of the meeting held on February 1, 1872, concerning action of the board of directors upon the map to be filed by the company. What was the date of this meeting?

A. February 1, 1872.

(Objected to by Mr. Payson as not coming within the order of the Court under which permission was given to take this additional proof.)

"Mr. Blickensderfer, the chief engineer of the road, laid before the committee surveys of the proposed line of the road.

Resolved, That the main route of the Atlantic & Pacific Railroad between a point on the western boundary line of the county of Los Angeles and a point in township 7 (7) north and range seven (7) east of San Bernardino base and meridian, State of California, be definitely fixed in accordance with the survey and plat of J. Blickensderfer, Jr., this day presented to us for approval.

Also, that the main route of the Atlantic & Pacific Railroad between San Francisco and San Miguel Mission in the State of California, be definitely fixed in accordance with the survey and plat of said chief engineer, also presented to us this day for approval, and that the President be authorized to make the necessary certificates required by law to said plats and file the same with the secretary of the interior as the designation of the route of said company's road between the points mentioned."

Q. What date was the next vote of the company concerning the approval of maps in 1872?

A. At a meeting of the executive committee, July 18, 1872. "A plat of the line of the road between San Miguel Mission in the valley of the Salinas river in the county of San Luis Obispo and the boundary line between the counties of Santa Barbara and Los Angeles, was laid before the committee, and the following resolution presented:

Resolved, That the main route of the Atlantic & Pacific Railroad in the State of California, between the San Miguel Mission in the valley of the Salinas river in the county of San Luis Obispo and the boundary line between the counties of Santa Barbara and Los Angeles, in the

valley of the Santa Clara river be definitely fixed in accordance with the survey and plat of J. Blickensderfer, Jr., chief engineer, this day presented to us for approval, and that the President be authorized to make the necessary certificates required by law to said plats and file the same with the secretary of the interior as a designation of the route of said company's road between the points mentioned.

The plat and resolution were referred to the President to ascertain if this route is the most desirable and acceptable to the people of California."

Q. What is the next meeting concerning that matter?

A. At a meeting of the executive committee, August 6, 1872.

"The following resolution presented at the meeting of the executive committee of July 18th, last, and then referred to the President was taken up and read:

Resolved, That the main route of the Atlantic & Pacific Railroad in the State of California between the San Miguel Mission in the valley of the Salinas river in the county of San Luis Obispo and the boundary line between the counties of Santa Barbara and Los Angeles, in the valley of the Santa Clara river, be definitely fixed in accordance with the survey and plat of J. Blickensderfer, Jr., chief engineer, this day presented to us for approval, and that the President be authorized to make the necessary certificates required by law to said plats, and file the same with the secretary of the interior as a designation of the route of said company's road between the points mentioned.

The President reported that he had ascertained that the route proposed was proper and should be adopted.

The resolution was adopted.

A plat of the route of this company's road through part of San Bernardino, California, and to the western bank of the Colorado river, Arizona, was presented, and it was

Resolved, That the main route of the Atlantic & Pacific Railroad in the county of San Bernardino, State of California, and to the east side of the Colorado river in Arizona, being a part of the line or route of said railroad, be definitely fixed in accordance with the survey and plat of J. Blickensderfer, J., chief engineer, this day presented to us for approval, and that the President be authorized to make the necessary certificates required by law to said plat and file the same with the secretary of the interior as a designation of the route of this company's road between the points mentioned."

Q. Read the record concerning the action of the board of directors upon the adoption and filing of these maps.

A. At a meeting of the directors, March 4, 1872. "The record of the meetings of the directors of November 10, 1871, and of the executive committee of November 16th, 25th, December 14th, 20th, 22nd, January 17th, 27th, February 1st, 19th, and 27th last, were read approved and confirmed."

Q. Please turn to the next meeting of the board concerning the approval of these maps and of the action of the executive committee.

A. At a meeting of the directors, August 14, 1872. "The record of the directors of July 18th (two meetings on

that day) and July 19th last, and of the executive committee of July 18th last and August 6th instant, was read."

Q. Are those records of July signed by the secretary?

A. Yes, sir.

Q. Please read into the record the proceedings of the meeting held on November 25, 1871.

A. At a meeting of the executive committee, November 25, 1871. "The following resolution was adopted:

Resolved, That the main route of the Atlantic & Pacific Railroad between the western boundary of the State of Missouri and the mouth of King Fisher creek in Indian Territory be definitely fixed in accordance with the survey and plat of J. Blickensderfer, Jr., chief engineer, this day presented to us for approval, and that the portion of this company's branch route between the western boundary of the State of Arkansas and a point in the valley of the Canadian river near ninety-sixth meridian be definitely fixed in accordance with survey and plat of said chief engineer also presented to us this day for approval, and that the president be authorized to make the necessary certificates required by law to said plats and file the same with the secretary of the interior, as a designation of the route of said company between the points mentioned."

Q. Is that record of that meeting duly attested by the secretary of the company? A. Yes, sir.

Q. Read the record of the meeting of January 17, 1872.

A. At a meeting of the executive committee, January 17, 1872:

"Resolved, That the main route of the Atlantic & Pacific Railroad between the mouth of King Fisher creek

in the Indian Territory to the point where it crosses the eastern boundary line of the Territory of New Mexico be definitely fixed in accordance with the survey and plat of J. Blickensderfer, Jr., chief engineer, this day approved; and that the portion of the company's branch route from a point in the valley of the Canadian river near the ninety-sixth meridian in the Indian Territory to the intersection of said branch with the main line of said Atlantic & Pacific Railroad at a point in the valley of said Canadian river west of the Red Hills, be definitely fixed in accordance with the survey and plat of said chief engineer, also presented to us this day for approval, and that the president be authorized to make the necessary certificates required by law to said plats and file the same with the secretary of the interior as a designation of the route of said company's road between the points mentioned."

Q. Was Mr. J. Blickensderfer, Jr., the chief engineer of the Atlantic & Pacific Railroad Company in June, 1871? A. I believe he was.

Q. Do you know how many engineers the company had in their employ in the year 1871?

A. I do not. I know that Mr. Robinson was from records that—I know in a general way that Mr. Robinson was an engineer in charge of surveys.

Q. Do the records show how many surveying parties the company had in the field at various times?

A. I believe not. It don't appear to have been made a matter of record in the proceedings of the board.

Q. Do the records of the company show any action of the board of directors concerning a map of general route or other route of any part of the line in California filed or to be offered to be filed in the interior department in the year 1869?

Objected to by Mr. Payson as incompetent under the order under which this evidence is permitted to be taken.

A. Not so far as I have found.

Q. Can you produce before the notary a record of any such meeting concerning that matter?

A. I don't know of any such record.

Q. Are you familiar with the records of the company during that period?

A. I cannot say that I am, not having been employed by the company at that time.

Q. Please examine the record of the proceedings of the company for the year 1869 and prior to that time, and state whether there is any record of any action by the company concerning a map of a line from Colorado river to the bay of San Francisco.

A. You mean the record of the proceedings of the board?

Q. Yes, sir.

A. I made an examination of the records yesterday with reference to this question and did not find any proceedings of the board relating to such map or maps.

Q. Do you know of your own knowledge whether any maps, reports of engineers and surveys belonging to the Atlantic & Pacific Railroad Company are at this time in the custody of any other person? A. I do not.

HARRISON W. GARDINER.

The reservation of the right to object on the part of the defendant as to all questions of competency is understood to include the competency of the examination of Mr. Gardiner on the direct examination by Mr. Call as not coming within the order under which this testimony is being taken.

I further certify that I am not of counsel or attorney to either of the parties to this suit nor interested in the event thereof; that each of the above-named witnesses was duly cautioned and sworn to testify the whole truth, and carefully examined, and that each of said witnesses lives in the State of Massachusetts at a greater distance than one hundred miles from Los Angeles, State of California; that at the hearing and taking of said testimony the persons hereinbefore mentioned were present and the parties were represented by counsel as stated; that the testimony was taken down in shorthand by the stenographer agreed upon and thereafter reduced to writing or typewriting by him, and that after having been so reduced to writing or typewriting it was subscribed by the witnesses respectively.

And I further certify that these depositions were retained by me until sealed up and directed by me to the clerk of the United States Circuit Court for the Southern District of California, at Los Angeles, in said State.

I further certify that all erasures and interlineations herein which are attested on the margin by my initials were made before such depositions respectively were signed.

Witness my hand and notarial seal at the city of Boston, Massachusetts, this twenty-third day of March, A. D. 1894.

ASA P. FRENCH,
Notary public in and for the commonwealth of Massachusetts.

[Seal]

I further certify that the following are the fees and expenses connected with taking said depositions:

Magistrate's fees $30.00
Stenographer's services 15.00

$45.00

ASA P. FRENCH,
Notary public.

[Endorsed]: Opened and filed May 7, 1894. Wm. M. Van Dyke, Clerk. ———, Deputy.

United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 64. Leo Longley, special examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk. ———, Deputy.

Plaintiff's Exhibit No. 66.

DEPOSITION.

THOMAS F. LAYCOCK, a witness produced on behalf of the complainant, being first duly cautioned and sworn, testified as follows:

Direct Examination.

By Mr. CALL.—Q. 1. What is your name?

A. Thomas F. Laycock.

Q. 2. What position do you hold in the United States land office at Los Angeles?

A. Clerk of the register, United States land office.

Q. 3. Have you produced the maps of the Atlantic & Pacific Railroad Company requested? A. Yes, sir.

Q. 4. Have you got them now in your custody?

A. Yes, sir.

Q. 5. I request that you will produce them before the examiner. A. (Maps produced by witness.)

Q. 6. Have you there a map of the Atlantic & Pacific Railroad route from the west boundary line of Los Angeles county to a point in township seven north, range seven east?

Mr. REDDING.—Objected to as incompetent, immaterial and irrelevant; calling for an opinion of the witness; and on the further ground that the testimony in this case does not show that the Atlantic & Pacific Railroad Company has made any route or located any line, or definitely fixed any line of road in the State of California. And the further objection that this is not proper evidence to be offered in rebuttal, but, if relevant at all, it should have been offered by the government on the direct testimony of the complainant. And the further ground that there has been no basis made for its introduction in rebuttal, on the ground that it could not have been introduced at the time the government endeavored to make out its direct case. And defendants hereby move to strike this

testimony from the files as constituting an impertinence, and will bring on said motion for hearing as soon as counsel can be heard and after the taking of testimony in this case has been finally closed.

A. Yes, sir.

Q 7. (By Mr. CALL)—Does that show the twenty and thirty-mile withdrawal limits?

Mr. REDDING.—The same objections.

A. Yes, sir.

Q. 8. (By Mr. CALL)—What endorsements are there upon that map made by the office?

A. They are pretty nearly obliterated. There are some on the bottom of it, endorsed on the back. The endorsement on the back is "Map of the A. & P. Railroad in California from range 8 east to 17 west, S. B. M., inclusive. Filed May 6, 1872. Of effect from March 12, 1872. Commissioner's letter of April 22, 1872. H. C. Austin, Register." I would state that this is a copy of the endorsement that is on the margin of this map, but it became almost obliterated and it was put on there.

Q. 9. How much can you read of the original endorsement on the map?

A. I can't read but very little of it without a glass.

Q. 10. I ask you to read what you can of it.

Mr. REDDING.—Note the same objections to each question, Mr. Reporter.

A. "May 6, 1872. Take effect from March 12, eighteen seventy"—something, "by commissioner's letter of April 22, 1872. H. C. Austin." The balance is torn off.

Q. 11. (By Mr. CALL)—Is that H. C. Austin's signature?

Mr. REDDING.—Same objections.

A. This is his signature, yes, and it is all in his handwriting.

Q. 12. (By Mr. CALL)—Are you acquainted with his handwriting?

Mr. REDDING.—Same objections.

A. I know it from seeing it in the office.

Q. 13. (By Mr. CALL)—Who was H. C. Austin?

Mr. REDDING.—Same objections.

A. He was register at the time that this map was received in the office.

Q. 14. (By Mr. CALL)—In 1872?

Mr. REDDING.—Same objections.

A. Register of the United States land office.

Q. 15. (By Mr. CALL)—I ask you to compare that map with map in evidence in this case marked Complainant's Exhibit 48, and state whether the one is a copy of the other.

Mr. REDDING.—Same objections.

A. I would state that I have carefully examined both maps, and that up to the west line of range seven they are perfectly identical—the west line. Beyond that—that is as far as Los Angeles county goes. East of that there is a difference in the two maps. And then the difference here is—there is also this portion that goes outside of this Los Angeles land district.

Q. 16. (By Mr. CALL)—You are referring to the map in the Los Angeles land office?

Mr. REDDING.—Same objections.

A. So far as the Los Angeles land district is con-

cerned they coincide exactly—so far as it is in this county is concerned.

Q. 17. (By Mr. CALL)—Extending westward to the ocean, or how far?

Mr. REDDING.—Same objections.

A. This one map—the two of them extend—this extends beyond Santa Barbara to the ocean. To the end of this land district. This piece is cut out.

Q. 18. (By Mr. CALL)—Wait a moment. I am not referring to that map yet. I ask you to produce, if you have it in your custody, map of the Atlantic & Pacific Railroad from the records of your office, showing the line from Los Angeles county by way of San Buenaventura and Santa Barbara.

Mr. REDDING.—Same objections. Mr. Call, I understand it is agreeable to you that where I have used the words "same objections," or do use them, that it is considered to apply to the last stated objection as if it were repeated in detail.

Mr. CALL.—Yes, sir.

Q. 19. Have you the map there?

Mr. REDDING.—Same objections.

A. Yes, sir.

Q. 20. (By Mr. CALL)—What endorsements are there, if any, on that map?

Mr. REDDING.—Same objections.

A. There are some. "Filed December 10, 1874." These endorsements are in lead pencil—or rather blue and red pencil. "And withdrawal to take effect from April 15, 1872."

Q. 21. (By Mr. CALL)—I ask you to compare that map last referred to with the map in evidence in this case marked Complainant's Exhibit No. 49 and state whether they are copies or not.

Mr. REDDING.—Same objection.

A. I would state I have carefully compared the two and find these two maps identical.

Q. 22. (By Mr. CALL)—Then the two maps on file in the United States land office, with the endorsements you have stated, are identical copies of the two maps marked Complainant's Exhibits No. 48 and 49, so far as the lands are involved in the United States land district, are they?

Mr. REDDING.—Same objections.

A. In this Los Angeles land district, yes, sir.

Q. 23. (By Mr. CALL)—Have you produced before the examiner the letter called for by your subpoena, being the letter of the commissioner of the general land office to the register and receiver of the United States land office at Los Angeles, California, dated November 23, 1874, and also the letter from the commissioner of the general land office to said register and receiver, dated April 22, 1872?

Mr. REDDING.—Same objections.

A. Neither of those letters can be found in the United States land office. We have had a careful search for them both, by myself and others, and they cannot be found. They are missing, both of them. They are not in the office.

Q. 24. (By Mr. REDDING)—What letters are those?

A. Those two letters that transmitted these maps. April 22, one is, I think, and the other—

Mr. CALL.—That is all.

Cross-Examination.

By Mr. REDDING.—Q. 25. Have you been able to find any evidence of those letters of transmittal having been received by your office?

A. Nothing beyond the endorsements on the maps.

Q. 26. But the receipt of the letters themselves, have you been able to find proof of?

A. I cannot find anything, and we have searched the office through thoroughly.

Q. 27. Then, so far as you are aware or can fix from the records of your office, you have no evidence to show that the letters of transmittal with the instructions therein were ever received by the land office at Los Angeles? A. Beyond the endorsements on the maps.

Q. 28. Who made the endorsements on those maps, do you know?

A. The endorsement on the map is in the handwriting of the register, Mr. Austin, as I know his handwriting from other records in the office. It is written in pencil and it is written by him.

Q. 29. How long have you been in the office?

A. Been in the office four years.

Q. 30. When was he in the office, how long ago?

A. 1872.

Q. 31. When did he leave the office?

A. I don't just know when he did leave.

Q. Well, then, how do you happen to know his handwriting?

A. By the records of the office in his handwriting. That is all.

Q. 33. Did he ever tell you that any particular handwriting was his own handwriting?

A. No, he never told me himself; but I know his handwriting in the office; that is all.

Q. 34. Well, how do you know it?

A. Well, I know it from the others.

Q. 35. Other people have told you so?

A. Other people have told me so; that is all. I never saw his handwriting that I know of—oh, I have seen it, but I never compared it with that.

Q. 36. Well, then, as I understand, you yourself do not know of your own knowledge his handwriting?

Mr. CALL.—I object as being incompetent, immaterial and irrelevant, and because the witness has already stated that he knew it from other records in his office.

Q. 37. (By Mr. REDDING)—Now, answer my question.

A. I know it by other records that I know are in his handwriting. And the comparison, so far as that is concerned, I know his handwriting as well as I know any one's, of course, in that way.

Q. 38. Let me ask you how you know his handwriting except it is by what other people told you?

A. I have letters written by himself, and other records in the office.

Q. 39. How do you know that was his signature?

A. Well, I suppose so. It is like everything else in the office. It is part of the records of the office.

Q. 40. Did you ever see him write his signature?

A. I have seen him write his signature; yes, sir.

Q. 41. You have seen him?

A. Yes, sir; several times.

Q. 42. Where?

A. In the office, endorsing papers and other matters; but I don't know it—I must say that I don't know it from that, because I have never compared it. But I simply know it from the records of the office, as I know anything of that kind.

Q. 43. Somebody has told you that that is his signature to these records?

A. No, sir. It is official. There is nothing to tell. It is an official record of the office.

Q. 44. How long since you have seen this gentleman?

A. Mr. Austin?

Q. 45. Yes.

A. Oh, I don't know. I think I saw him a few days ago.

Q. 46. He is still in Los Angeles, is he?

A. Yes, sir; he is Justice of the Court here.

Q. 47. Could he be produced by the government in this case here to testify if they saw fit to produce him?

A. I don't know why not, because he is right here. He is Judge of the Police Court now, at the present time.

Mr. REDDING.—That is all.

(Signed) THOMAS F. LAYCOCK.

Mr. CALL.—I offer in evidence an exemplified copy of a letter dated March 9, 1872, from the secretary of the interior to the commissioner of the general land office, being a tracing reproducing the original marks and lines of such letter; and request that the same be marked Complainant's Exhibit No. 50.

Mr. REDDING.—The defendants object to the introduction of this last exhibit as not being authorized by law, in that there is no provision for the land office to exemplify a tracing attempting to reproduce the character and marks of an original letter on file; that the Revised Statutes provide that the interior department may exemplify copies of documents, but not exemplify an alleged reproduction or fac simile of an original; that the same, therefore, is incompetent, immaterial and irrelevant. Defendants furthermore object to the same unless it is accompanied by the proper oral testimony or proper proofs of the character of the document sought to be reproduced, and herewith ask leave, if it become necessary, to have the necessary testimony taken for the purpose of having the Court informed as to the truth of the contents, form and character of the original letter of transmittal of March 9, 1872, herein sought to be reproduced, reproduced, or any other documents of like nature. Defendants furthermore object to the same, if it is introduced to show a copy of the said letter, as being an encumbrance to said record, in that there is a copy of the said letter already on file in this case; and the defendants give notice that they herewith move to strike the same from the files of this Court as an impertinence to the rec-

ord, and will call on for hearing said motion when the testimony in this case has been finally closed.

Mr. CALL.—I offer in evidence an exemplified copy of a letter dated March 9, 1872, from the office of the secretary of the interior of the United States, being a copy of said letter as imprinted in the press copy book of said department; and request that the same be marked Complainant's Exhibit No. 51.

Mr. REDDING.—Same objection, and further objected to as not forming and not being proper evidence, in that it is offered simply to show a supposed impression taken upon tissue paper of a letter which has been transmitted and is now on file in the office of the commissioner of the general land office; that the impression is not the best evidence, and is not competent, and is irrelevant and immaterial. And the same is further objected to as not being proper rebuttal testimony, but belongs to the direct case. And the defendants give notice that they herewith move to strike the same from the files of this Court as an impertinence to the record, and will call on for hearing said motion when the testimony this case has been finally closed.

Mr. CALL.—I offer in evidence an exemplified copy of a letter dated March 9, 1872, from the secretary of the interior to the commissioner of the general land office, from the records of the office of the secretary of the interior, being a letter transmitting for appropriate action four maps showing the location of portions of the Atlantic & Pacific Railroad Company, and being the record of the letter before offered and marked Complainant's Exhibit

No. 51; and request that the same be marked Complainant's Exhibit No. 52.

Mr. REDDING.—Same objection. And defendants respectfully call attention of the Court to the fact that this is offered as a copy of the records kept in the interior department, which records are written out in longhand, but is not the letter of transmittal itself, which is on file in the office of the commissioner of the general land office. They furthermore object that the same is not proper rebuttal testimony and give notice that they herewith move to strike the same from the files of this Court as an impertinence to the record, and will call on for hearing said motion when the testimony in this case has been finally closed.

Mr. REDDING.—I understand that this is not offered by you as an exemplified copy of the letter as transmitted, or rather as on file, but as an exemplified copy of the record of this letter kept in the interior department.

Mr. CALL.—It is offered as a record of the interior department and of the secretary of the interior.

I offer in evidence a letter dated November 23, 1874, from the commissioner of the general land office to the register and receiver of the United States land office, at Visalia, California, transmitting map of definite location of Atlantic & Pacific Railroad; and request that the same be marked Complainant's Exhibit No. 53.

Mr. REDDING.—Same objections. Same notice. And same motion.

Mr. CALL.—I offer in evidence an exemplified copy of a letter dated November 23, 1874, from the commissioner

of the general land office to the register and receiver at San Francisco, California, transmitting a map of the definite location of the Atlantic & Pacific Railroad.

Mr. REDDING.—Between what points?

Mr. CALL.—It evidently refers, from the maps, from the western boundary line of Los Angeles county to San Miguel Mission by way of Santa Barbara and Ventura.

Mr. REDDING.—Does it so state in the letter?

Mr. CALL.—It does not state so in the letter, but I state that from other letters sent at the same time in reference to the same matter, in evidence in the case.

Mr. REDDING.—Same objection. Defendants also object to the counsel for complainant using the term "definite location" in respect to these letters of transmittal. Same notice; same motion.

Mr. CALL.—I ask that the same be marked Complainant's Exhibit No. 54.

I now offer in evidence an exemplified copy of a letter dated April 22, 1872, from the commissioner of the general land office to the register and receiver at San Francisco, California, transmitting map of definite location of Atlantic & Pacific Railroad from San Miguel Mission to San Francisco, and request that the same be marked Complainant's Exhibit No. 55.

Mr. REDDING.—Same objection; same notice, and same motion.

Mr. CALL.—I offer in evidence an exemplified copy of a letter dated May 7, 1872, from H. C. Austin, register of the land office at Los Angeles, California, to the commissioner of the general land office, acknowledging the re-

ceipt of his letter of April 22, 1872, with the map therein enclosed; and ask that the same be marked Complainant's Exhibit No. 56.

Mr. REDDING.—Same objection; same notice, and same motion.

Mr. CALL.—I offer in evidence an exemplified copy of a letter dated October 18, 1877, from the secretary of the interior to the commissioner of the general land office, relating to the maps of definite location of the Atlantic & Pacific Railroad Company and orders of withdrawal for said company, and refusing to set aside such withdrawal or restore the lands withdrawn for the benefit of said railroad company, and request that the same be marked Complainant's Exhibit No. 57.

Mr. REDDING.—Same objection; same notice, and same motion.

Mr. CALL.—I offer in evidence an exemplified copy of letters dated April 16, 1872, from the secretary of the interior to the commissioner of the general land office, and of April 11, 1872, from the secretary of the interior to Francis B. Hayes, president of the Atlantic & Pacific Railroad Company, and of April 10, 1872, from the secretary of the interior to Francis B. Hayes, president of the Atlantic & Pacific Railroad Company, all included as one exhibit, and ask that the same be marked Complainant's Exhibit No. 58.

Mr. REDDING.—Same objections, same notice, and same motion.

Mr. CALL.—I offer in evidence an exemplified copy of a letter dated November 11, 1869, from J. D. Cox, secre-

tary of the interior, to the commissioner of the general land office, relating to his rejection of the map of the Atlantic & Pacific Railroad general route from the Colorado river directly northwest to San Francisco, and relating to the restoration of lands withdrawn for the Southern Pacific Railroad; and request that the same be marked Complainant's Exhibit No. 59.

Mr. REDDING.—Same objections; and defendants further object that copies of this letter are already on file in this action, heretofore introduced, and the same is not proper rebuttal testimony on the part of the government. Same notice. Same motion.

Adjourned.

[Endorsed]: United States Circuit Court, Southern District California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 66. Leo Longley, special examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 71.

Certificate.

"F" (4—207.) W. J. M.

F. I. W.

Department of the Interior,

General Land Office.

Washington, D. C., April 18, 1895.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of letters

is a true and literal exemplification of the original letters on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
Commissioner of General Land Office.

[Seal]

Letter of Secretary.

L. G. R. R.

Department of the Interior,
Washington, D. C., January 3, 1867.

Sir:

I send, herewith, for your appropriate official action in the premises, a copy of a letter from F. G. Phelps, Esq., President of the Southern Pacific Railroad, dated the 28th of September last, with the map accompanying the same showing the preliminary survey of said road from San Francisco, California, to the Colorado River on the eastern boundary of said state.

I am, sir,
Very respectfully,
Your ob't servant,
O. H. BROWNING,
Secretary.

Hon. Jos. S. Wilson, Commissioner of the General Land Office.

[Endorsed]: *G. 93.328. No. 1.* Hon. Secretary of Interior, Jan. 31 (Mr. Cromwell, January 3, 1867), 1867. Encloses a letter, map, etc., from T. G. Phelps, President

of the Southern Pacific Railroad, showing a preliminary survey, etc. (Act July 27, 1866.) Withdrawal ordered in letters to local officers at San Francisco, Visalia and Stockton, March 22, 1867. Mendenhall.

F. Cromwell.

Jan. 4, '67.

LETTER.

(Copy.)

San Francisco, Sept. 28, 1866.

Sir:

Herewith you will please find the plat of the preliminary survey of the Southern Pacific Railroad, which the company request may be filed in your office, and that instructions may be at once sent to the offices of the land districts through which the projected road is to run, withdrawing the lands, within the exterior lines from which the company is entitled, under the act of Congress, to select the lands donated in aid of the construction of the road (as shown by the colored lines on the map) from market.

You will please note the fact that the company has this day filed a duplicate of this map in the land office in San Francisco, and we respectfully request that that office may be immediately directed by telegram (at the expense of the company) to withdraw the lands, as indicated in that district, from market.

Very respectfully,

F. G. PHELPS,

President Southern Pacific Railroad.

Hon. Secretary of the Interior,

Washington, D. C.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Plaintiff's Exhibit No. 71. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, clerk. ————, deputy.

Plaintiff's Exhibit No. 72.

Certificate.

"F" (4—207.) W. J. M.

F. I. W.

Department of the Interior,

General Land Office.

Washington, D. C., April 18, 1895.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of the General Land Office.

[Seal]

LETTER.

L. G. R. R.

Department of the Interior,
Washington, D. C., March 19, 1867.

Sir:

Under date of January 3, 1867, a map showing the designated route of the Southern Pacific Railroad in California, filed under the act of Congress approved July 27, 1866, was sent to you for appropriate action. If a withdrawal of lands has not been ordered on account of said road, you will cause the necessary instructions to be issued to the local land officers to withhold the odd sections within the granted limits of twenty miles on each side of said road, as shown on the map before mentioned and also withdraw the odd sections outside of the twenty miles and within thirty miles on each side, from which the indemnity for lands disposed of within the granted limits is to be taken.

The even sections within the twenty-mile limits will, under the act 3d March, 1853, "An act to extend pre-emption rights to certain lands therein mentioned," be increased to $2.50 per acre and subject to the provisions of the pre-emption and homestead laws at that price.

Mineral lands other than coal and iron are excluded from this grant.

I do not think it necessary at this time to pass upon the question as to whether this railroad company have adopted the route of any other railroad. Any indemnity of grant arising out of conflict of location under the first proviso in the third section of the act will be reserved for future consideration.

The withdrawal will be ordered to take effect upon the receipt of your instructions at the local office.

Very respectfully,
Your obt. servant,
O. H. BROWNING,
Secretary.

Hon. Jos. S. Wilson,
Commissioner of the
General Land Office.

[Endorsed]: *G. 99. 248 No. 3.* Hon. Secretary of Interior, March 19, 1867. Refers to a map of the Southern Pacific Railroad filed in this office on 3d Jan., 1867, and asks that instructions be issued for the withdrawal of certain land. Withdrawal ordered March 22, 1867. Mendenhall See to R. & R. Stockton, San Francisco & Visalia, Cal. Pg. 31 Mendenhall R.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Plaintiff's Exhibit No. 72. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, clerk. ————, deputy.

Plaintiff's Exhibit No. 73.

Certificate.

"F" (4—207.) W. J. M.
F. I. W.

Department of the Interior,
General Land Office.
Washington, D. C., April 18, 1895.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a let-

ter is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
Commissioner of General Land Office.

[Seal]

LETTER.

Department of the Interior,
Washington, D. C., July 14, 1868.

Sir:

I have received your letter of the eighteenth ultimo and accompanying papers, having reference to the withdrawal of certain land in California for railroad purposes.

It appears that Franklin Steel, Esq., on the 23d of May last, asked that the lands situated between San Francisco and San Jose, in California, be restored to the condition they were in prior to the withdrawals made respectively in 1864 and 1867 for the Central Pacific Railroad Company of California and the Southern Pacific Railroad Company.

Mr. Steele states that the existence of these withdrawals, which he claims were improvidently made, absolutely estop citizens from settling upon or locating the odd sections and requires payment of double price for the even sections.

Referring to papers previously filed in your office he asks that the matter be examined.

The withdrawal in 1864 was made for the Central Pacific Railroad Co. of California. The San Francisco and San Jose Railroad Company as assignees of that company claimed the benefit of said withdrawal under the acts of Congress of July 1, 1862, and July 2, 1864.

After the consideration of the claim of said company, it was rejected on the 31st of October last, and you were so advised on the 12th of November following. Consequently that withdrawal of itself will not stand in the way of a restoration.

The grant to the Southern Pacific Railroad Company is by the 18th section of the act approved July 27, 1866 (14 Stat. 299), which provides that the company incorporated under the laws of the State of California is authorized to connect with the Atlantic & Pacific Railroad Company, formed under the act, at such point as they shall deem most suitable for a railroad line to San Francisco, etc., and to aid in the construction makes similar grants of land, subject to the conditions, limitations, etc., imposed upon the Atlantic and Pacific Railroad Company.

The company claim that under the articles of association they have the option of locating the terminus of their road at any point on the bay of San Francisco, and that the act of Congress absolutely makes San Francisco the western terminus, and consequently their right to the land is *a* perfect between the points mentioned as it is between San Jose and the connecting points with the Atlantic & Pacific Railroad.

The Southern Pacific Railroad Company having been recognized by Congress as a corporation formed under state laws, the question arises what was the location of their road as required by those laws?

From the papers it appears that under the general railroad law of the State, approved May 20, 1861, authority is given to any number of persons, not less than ten, being subscribers, etc., to adopt articles of association wherein they are required to state "the place from, and to which, the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length, as near as may be," with authority to make a change in the general route, but not so as to avoid any point named in the articles of association.

The articles of association designate the route of the road as "from some point on the bay of San Francisco, in the State of California, through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego to the town of San Diego in said State, thence eastward through said county of San Diego to the eastern line of said State of California, there to connect with a contemplated railroad from said eastern line of the State of California to the Mississippi river."

The first county mentioned envelopes the lower portion of the bay of San Francisco. To reach the city of San Francisco from there, the road would have to be constructed northward through the counties of San Mateo and San Francisco (counties not mentioned in the articles of association), a distance of near fifty miles, and along side of or upon the railroad already constructed, and upon

which the cars were and had been running for nearly two years prior to the adoption of said articles of association.

The State law requires the corporations to fix the place from, and to which, the proposed road was to be constructed, and the counties through which it was intended to pass. This was done.

The starting point being from some point on the bay of San Francisco, and the first county through which it was intended to pass is Santa Clara, no authority is conferred to construct the road through counties to the north of it, leaving out of view the fact that at the date of corporation a railroad company created by and under the same State law had then a railroad constructed and in operation along the narrow peninsula which extends from San Jose to San Francisco.

Further than this, other portions of the route as designated do not conform to law. The line does not touch the counties of San Luis Obispo, Los Angeles and San Diego. In fact, the same does not go to within something like 150 miles of the town of San Diego, a point at which the road is required to go, and from which it is to start for the eastern line of the State, there to connect with the Atlantic & Pacific Railroad.

The route of the Atlantic & Pacific Railroad through the territories of the United States to the eastern boundary of the State of California has not been fixed so far as this department is advised, and until that company fix the route of their road to that point, the Southern Pacific Railroad Company will be unable to meet and connect with it.

This designation of the general route of the Southern Pacific Railroad not conforming to law, my order of the 19th March, 1867, directing you to order a withdrawal of lands for said road is hereby revoked, and you will immediately issue instructions to the proper local officers in California restoring the lands to the status they held at the date of the withdrawals before mentioned.

Upon the Southern Pacific Railroad Company designating the route of ther road in conformity with law, and filing a map thereof in this department, duly certified, such orders will be issued as may seem to be required to protect the rights of the company. I return the papers.

Very respectfully,
Your ob't. servant,
O. H. BROWNING,
Secretary.

Hon. Jos. S. Wilson,
Commissioner of the
General Land Office.

[Endorsed]: *H. 37. 522 No. 7. F. 4087.* Secretary of the Interior, July 14, 1868. Returns papers having reference to the withdrawal of certain lands in California for Southern Pacific Railroad, and revokes his order of the 19th March, 1867. Against further action of department or Congressional resolution.

P. 146.

F. July 14, 1868. R.

[Endorsed in lead pencil]: Lett to R. & R. at San Francisco, Cal., July 21, '68, enclosing copy of this by Division G. Eastman.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Plaintiff's Exhibit No. 73. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 74.

Certificate.

F. (4—207.) W. J. M.

F. I. W.

Department of the Interior,
General Land Office.

Washington, D. C., April 18, 1895.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
Commissioner of General Land Office.

[Seal]

LETTER.

Copy V. W. H. Pac. R. R.

Department of the Interior,
Washington, D. C., August 20, 1868.

Sir:

A request having been made by General W. S. Rosecrans on behalf of the Southern Pacific Railroad Company that an opportunity may be afforded to present evidence

on the question of the legality of the action of the company under their charter in the location of their road, I have consented to suspend for the present so much of my order of the 14th ultimo as directed the restoration of lands situated south of San Jose.

So much of said order as directed a restoration of lands between San Francisco and San Jose will be carried into immediate effect, and you will issue the requisite instructions to the local land officers in California without delay.

Very respectfully,
Your obt. servant,
O. H. BROWNING,
Secretary.

Hon. Jos. S. Wilson,
Commissioner of the
General Land Office.

[Endorsed]: Letter *H. No. 10*, No. *40,696*. Hon. Secretary of Interior, Aug. 20, 1868. Division *F. 4425*. No. —. Orders a suspension of so much of his order of 14th ult. as directed the restoration of lands situated south of San Jose, to the Southern Pacific Railroad Co. *Immediate*. Referred to Div. R. Received (G. L. O.) Aug. 20, 1868. [Endorsed in blue lead pencil]: M. Mendenhall, immediate, Aug. 20, '68.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Plaintiff's Exhibit No. 74. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, clerk.

Plaintiff's Exhibit No. 75.

Certificate.

W. H. A. A. M.

(Vignette.)

United States of America,
Department of the Interior,
Washington, D. C., April 20, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the Interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting Secretary of the Interior.

E. W.

[Seal

LETTER.

Department of the Interior,
Washington, D. C., February 21, 1870.

Sir:

I have received your letter of the nineteenth instant, inclosing an affidavit of Lloyd Tevis (president) and B. B. Minor (secretary) of the Southern Pacific Railroad Company of California, showing the completion of thirty miles of the road and telegraph line of said company, commencing at San Jose and terminating at Gilroy, and requesting the appointment of commissioners to examine and report upon the same. They state in their affidavit

that said section of road has been constructed on and along the line of the road as designated on the plat thereof filed in the general land office January 3, 1867, and entirely within the limits of the public lands withdrawn by the order of the secretary of the interior, dated March 19, 1867.

In reply I state, that the route of the road as shown on the map referred to was found by my immediate predecessor and myself, after full and careful consideration, not to be designated in conformity with the charter of the company. Consequently, the order withdrawing the lands was revoked by this department; but afterwards the restoration of those lands was suspended to await the action of Congress.

I, therefore, cannot recognize any right in the company to lands, nor to have commissioners appointed to examine any portion of their road, until a map shall be filed and accepted by this department showing the line of the road to be located as required by their charter; or until Congress, by appropriate legislation, shall confer on the company a grant of lands on the route designated upon the map referred to in said affidavit.

Very respectfully,
Your obt. servant,
J. D. COX,
Secretary.

C. P. Huntington, Esq.,
54 William St.,
New York.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs.

Southern Pacific Railroad Co. et al. No. 600. Plaintiffs Exhibit No. 75. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, clerk; ————————, deputy.

Plaintiff's Exhibit No. 76.

Certificate.

"F."

F. I. W. (4—207.) W. J. M.

Department of the Interior,

General Land Office.

Washington, D. C., April 18, 1895.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,

Commissioner of General Land Office.

[Seal]

LETTER.

Pac. R. Rds.

Department of the Interior,

Washington, D. C., Nov. 11, 1869.

Sir:

I have received your letter of the fifth instant, returning, at my request, my decision of the second instant, in the case of the Southern Pacific Railroad Company, and the accompanying map filed by the president of the Atlantic & Pacific Railroad Company, upon which he asks

that the lands along the route shown upon the map (being the same as that of the Southern Pacific Railroad), may be reserved for his company.

The Southern Pacific Railroad Company was organized by the adoption of articles of association, November 29, 1865, under the general law of the State of California, "approved May 20, 1861, and the several acts supplementary to and amendatory thereof, for the purpose of constructing, owning and maintaining a railroad from some point on the bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego in said State; thence eastward through the said county of San Diego to the eastern line of the State of California; thence to connect with the contemplated railroad from said eastern line of the State of California to the Mississippi River."

The eighteenth section of said State act of 1861 provides that "nothing in this act shall be so construed as to confer any powers on such companies to so change their road as to avoid any point named in their articles of association, except as provided in section seventeen, subdivision seven, of the act." Subdivision seven provides that the company "may change the line of its road, in whole or in part, whenever a majority of the directors shall so determine, as provided hereafter, but no such change shall vary the route of such road, as contemplated in the articles of association of such company."

This act prohibits the company organized under its provisions from making any material change in the line

of their road. Consequently the route upon which the withdrawal of 1867 was secured, not passing through several of the counties named in the articles of association, nor within 150 miles of the town of San Diego, was in violation of the State law.

I am clearly of opinion that when there is a grant by Congress of land to a railway company organized under a state law, for the purpose of constructing a road, the lands can only be withdrawn upon the authorized route of such road. Congress did not assume to confer upon an existing company in California the right to construct a road not authorized by its articles of association or to diverge from the route which they prescribe. It would be a singular anomaly if Congress should empower a State corporation to do an act expressly forbidden by a law creating it, which the state had the constitutional power to enact. The withdrawal was, I am satisfied, not warranted by the act of July 27, 1866.

If it be conceded that the act gives them adequate authority to construct a branch by the most direct and practicable route from their own road to the point where the Atlantic & Pacific road crosses the Colorado, still, any question in relation to it is essentially different from that presented for my consideration.

I now return my decision of the second instant, and you will instruct the local land officers to restore the lands withdrawn in 1867 to their former status after sixty days' public notice by advertisement.

I cannot recognize the claim of the Atlantic & Pacific Railroad Company to a reservation of lands upon the route

in question. The act already cited, upon which they rely, does not, as I construe it, make them a grant of lands from the point at which the road shall strike the Colorado river, to San Francisco. As this is the only question before me, I forbear to express an opinion upon their right to construct a railroad in California or upon their existing status under the eighth and other sections of the act. I return the map.

Very respectfully,
Your obt. servant,
J. D. COX,
Secretary.

Hon. Jos. S. Wilson,
Commissioner of the
General Land Office.

[Endorsed]: *No. 32.* Secretary of Interior, November 11, 1869. *H. 8124/3.* Refers to his decision of second inst., and directs restoration of lands withdrawn for Southern Pacific Railway in California; also reject application of Atlantic & Pacific Railway for withdrawal of said lands on account of said road. See to him. Nov. 13, '69. M. Withdrawal ordered Nov. 12, '69. F. Nov. 12, '69. M.

United States Circuit Court, Ninth Circuit of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Plaintiff's Exhibit No. 76. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, clerk; ————, deputy.

Plaintiff's Exhibit No. 77.

Certificate.

"F" (4—207.) W. J. M.

F. I. W.

Department of the Interior,
General Land Office.

Washington, D. C., April 18, 1895.

I, S. W. Lamoreux, commissioner of the general land office, do hereby certify that the annexed copy of a letter is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
Commissioner of the General Land Office.

[Seal]

LETTER.

Ld. Gt. R. Rds.

Department of the Interior.

Washington, D. C., Dec. 15, 1869.

Sir:

Under date of the fourteenth instant, the Hon. J. M. Howard, chairman of the senate committee on the Pacific railroad, called my attention to a joint resolution pending before that committee, in relation to the lands withdrawn on account of the Southern Pacific Railroad Company.

In accordance with Mr. Howard's suggestion "that the lands should hold their present status without change in any respect until this resolution is finally acted upon by Congress," the restoration of lands under my decision of the second and eleventh ultimo will be suspended until you are further advised by this department.

Very respectfully,

Your obt. servant,

J. D. COX,

Secretary.

Hon. Jos. S. Wilson,

Commissioner of the

General Land Office.

[Endorsed]: *No. 33. H. 85040.* Hon. Secretary Interior, Dec. 15, '69. Suspending the restoration of the Southern Pacific railroad lands. Orders issued to R. & R. F. 193. Dec. 20, '69.

United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Plaintiff's Exhibit No. 77. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, clerk. ————————, deputy.

Defendant's Exhibit No. A 1.

Certificate.

J. I. P. A. M.

(Vignette.)

United States of America.

Department of the Interior.

Washington, D. C., Nov. 26, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the

original and of its endorsement, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

WM. H. SIMS,
Acting Secretary of the Interior.

E. W.

[Seal]

LETTER.

Henry Beard,
Attorney at Law,
927 F. St., N. W.

Washington, D. C., Feb. 24, 1887.

Hon. L. Q. C. Lamar,
Secretary of the Interior:

Sir:

Having recently learned that a copy of the resolution of the board of directors of the Southern Pacific Railroad Company of California, accepting the grant by act of Congress of March 3, 1871, can not now be found in the files of the department, I have been instructed by the general solicitor of the company to enclose the written copy of said resolution of acceptance adopted by said board on the 16th of May, 1871.

Very respectfully,
HENRY BEARD,
Attorney Southern Pacific Railroad of California.

[Endorsement]: 1858. Department of the Interior. L. & R. R. Div. Received Feb. 25, 1887.

Beard, Henry. City. Feb. 24, '87. Encloses copy of resolution of board of directors of Southern Pacific Railroad Co. of California accepting provisions of act of March 3, '71. Acknowledged Feb. 25, '87. 1 Enc.

[Endorsed]: A 1 L L. United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 587. Defendant's Exhibit No. A1. Leo Longley, Special Examiner. United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Defendant's Exhibit No. A1. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, clerk. ————, deputy.

Defendant's Exhibit No. A 2.

Certificate.

A. M.
P. M. S.
W. W. B.

(Vignette.)

United States of America,
Department of the Interior.
Washington, D. C., August 21, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of a certified copy of a resolution of the Southern Pacific Railroad Company accepting the terms, conditions and impositions of the act of Congress approved March 3, 1871, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

WM. H. SIMS,
Acting Secretary of the Interior.

E. W.

[Seal]

RESOLUTION.

Resolution of the Southern Pacific Railroad Company accepting the terms, conditions and impositions of an act of Congress of the United States, incorporating the Texas Pacific Railroad Company.

"Resolved, That this company will and does hereby accept the terms, conditions and impositions of the act of Congress of the United States entitled 'An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road and for other purposes,' approved March 3, 1871, and that a copy of this resolution of acceptance, certified under the seal of this company, be forwarded to and filed with the secretary of the interior."

I, J. L. Willcutt, secretary of the Southern Pacific Railroad Company, hereby certify the foregoing to be a full, true and correct copy of a resolution adopted by the board of directors of said company at a meeting of said board held on the sixteenth day of May, A. D. 1871.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said company at the city of San Francisco, Cal., this fifth day of February, A. D. 1887.

J. L. WILLCUTT,

[Seal] Secretary Southern Pacific Railroad Co.

State of California,
City and County of San Francisco. } ss.

Personally appeared before me J. L. Willcutt, personally known to me to be the person who signed the within certificate, and who acknowledged that the signature of J. L. Willcutt, secretary, attached to the foregoing resolution and certificate thereof was his genuine signature, and that he duly executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this tenth day of February, 1887.

E. B. RYAN,

Notary Public in and for the city and county of San Francisco, California.

[Seal]

[Endorsed]: A2 L L. 1858. Department of the Interior. L. & R. R. Received Feb. 25, 1887.

[Endorsed]: United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 587. Defendant's Exhibit No. A2. Leo Longley, Special Examiner. United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Defendant's Exhibit No. A2. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, clerk. ————————, deputy.

Defendant's Exhibit A 3.

Certificate.

A. M.
E. H. H.
W. W. B.

(Vignette.)

United States of America,
Department of the Interior.

Washington, D. C., Aug. 15, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals with their endorsements, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

WM. H. SIMS,
Acting Secretary of the Interior.

E. W.

[Seal]

LETTER.

Office of the Southern Pacific Railroad Co.,
San Francisco, Nov. 30, 1866.

Hon. the Secretary of the Interior:

Your favor of the twenty-ninth ult., addressed to Hon. T. G. Phelps, president of this company, is received, and enclosed I send you certified copy, under seal of the company, of resolution accepting the provisions and condi-

tions of the act of Congress referred to in your letter. We trust that this will be found satisfactory, and that upon receipt hereof, the request made in Mr. Phelps' letter of Sept. 28, 1866, will be complied with.

I write this at request of Mr. Phelps.

Very respectfully,

Your obt. servt.,

CHAS. N. FOX,

Acting Secretary of Southern Pacific Railroad Co.

[Endorsed]: *Received Dec. 21, 1866.* San Francisco, Nov. 30, 1866. *Southern Pacific.* Chas. N. Fox, acting secretary. Encloses acceptance by the Southern Pacific Railroad Co. of the act of Congress. L. G. Pac. R. R., Vol. 1, 20 Engineer Office, Dec. 24, 1866. Department of the Interior. Acknowledged by Chief Clerk Dec. 24, 1866; also see letter to Mr. Fox and Comr. Genl. L. O., dated Jan. 3, '67. Department of the ——— Dec. 24, 1866, Interior.

Resolution.

To the Hon. the President, and the Secretaries of the several Departments of the Government of the United States of America:

At a meeting of the board of directors of the "Southern Pacific Railroad Company" held at the office of said company in the city of San Francisco, in the State of California, on the twenty-fourth day of November, A. D. 1866, it was unanimously

"Resolved, That this company will and does hereby accept the terms, conditions and impositions of the act of

Congress of the United States entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Ocean,' passed at the first session of the Thirty-ninth Congress, and that a copy of this resolution of acceptance, certified under the seal of this company, and signed by the president and secretary, be forwarded to and filed with the secretary of the interior."

All of which we hereby certify.

Witness our hands and seal of said company this twenty-sixth day of November, A. D. 1866.

T. G. PHELPS,

President of the Southern Pacific Railroad Co.

CHAS. N. FOX,

Acting Secretary of the Southern Pacific Railroad Co.

[Seal]

[Endorsed]: "(C)" 1 600 A3 L L. Southern Pacific Railroad Co. "Resolution of Acceptance." United States Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. No. 600. Defendant's Exhibit No. A3. Leo Longley, Special Examiner. Filed Dec. 30, 1895. Wm. M. Van Dyke, clerk. ————————, deputy.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GARRIT L. LANSING, Trustees, THE CENTRAL TRUST COMPANY OF NEW YORK, and the COLORADO RIVER IRRIGATION COMPANY,
Defendants.

No. 600.

Third Partial Report of Examiner in Chancery.

To the Honorable, the Judges of the Circuit Court of the United States in and for said District:

Pursuant to an order of reference made and entered in the above-entitled cause as of the eighth day of April, 1895, whereby it is ordered that the undersigned, as specil examiner in chancery, shall take the evidence in the above-entitled cause and report the same to the Court, the said special examiner does now submit this his third partial report, as follows:

That on the eleventh day of August, 1896, at three o'clock P. M., the complainant appeared at the office of Joseph H. Call, Esquire, Currier block, in the city of Los Angeles, California, by its solicitor Joseph H. Call, Esq., and the defendants by their counsel Walter J. Trask, Esq.,

and thereupon the complainant introduced in evidence exhibit numbered Complainant's Exhibit No. 78.

And the said record accompanying this report contains all of the evidence and exhibits introduced in said cause by the respective parties between the date of my said second partial report and the date hereof; all of which, with the exhibits introduced, is herewith returned to the Court.

LEO LONGLEY,
Special Examiner in Chancery.

August 20, 1896.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, GARRIT L. LANSING, Trustees, THE CENTRAL TRUST COMPANL OF NEW YORK, and the COLORADO RIVER IRRIGATION COMPANY,
Defendants.
} No. 600.

Testimony.

Testimony on behalf of complainant, taken by consent before Leo Longley, Special Examiner of the United States Circuit Court in said cause, this eleventh day of August, A. D. 1896. Present: Joseph H. Call, Esq., spe-

cial assistant United States attorney and counsel for the United States, for complainant; Walter J. Trask, Esq., of counsel for defendants, appearing on behalf of defendants.

Mr. CALL.—I offer in evidence a certified copy of the letter and decision of C. Delano, secretary of the interior, to Willis Drummond, commissioner of the general land office, dated May 9, 1873, refusing to patent certain lands to the Southern Pacific Railroad Company under its so-called main line grant, upon the ground that such lands were reserved prior to the passage of the joint resolution of June 23, 1870, at which time and under which joint resolution the grant to said company was made; and request that the same be marked Complainant's Exhibit No. 78.

Mr. TRASK.—To which the defendants object, on the ground that it is incompetent, irrelevant and immaterial, and not in rebuttal.

[Endorsed]: No. 600. United States Circuit Court, Southern District of California. United States of America vs. Southern Pacific Railroad Co. Third partial report of Special Examiner Longley. Filed Aug. 20, 1896. Wm. M. Van Dyke, clerk, by E. H. Owen, deputy.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 1552 /8

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, TRUSTEES, AND THE CENTRAL TRUST COMPANY, OF NEW YORK,

Appellants,

VS.

THE UNITED STATES OF AMERICA,

Appellee.

VOLUME IV

(PAGES 1301 to 1748 Inclusive)

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 494

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, Trustees, AND THE CENTRAL TRUST COMPANY, OF NEW YORK,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

VOLUME 4

(PAGES 1301—1748 Inclusive.)

Appeal from the Circuit Court of the United States for the Southern District of California.

Plaintiff's Exhibit No. 78.

Certificate.

J. I. P.

A. M.
E. H. H.
M. C. McN.

(Vignette.)

United States of America,
Department of the Interior.
Washington, D. C., April 7, 1896.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

JNO. M. REYNOLDS,
Acting Secretary of the Interior.
Dy.

[Seal]

LETTER AND DECISION.

Department of the Interior.
Washington, D. C., 9th May, 1873.

Sir:

I have considered the question submitted for my opinion, presented by the application of James F. Stuart, to have certain lands, now withdrawn, restored to market, and the application of the Southern Pacific Railroad to have the same lands patented to said road.

The facts are these: January 30, 1865, lands were withdrawn for the Central Pacific Railroad, for twenty-five miles on each side of a designated route from Sacramento, via San Jose, to San Francisco, California, under the acts of July 1, 1862 (12 Stat. 489), and July 2, 1864 (13 Stat. 356). The rights conferred by these acts upon the Central Pacific, were assigned to the Western Pacific so far as they relate to the construction of the said road from San Jose to Sacramento, and this assignment was ratified by the act of March 3, 1865. (13 Stat. 504.)

By the act of July 27, 1866 (114 Stat. 292), the Southern Pacific Railroad, a company incorporated under the laws of the State of California, was authorized to connect with the Atlantic & Pacific Railroad, at such point near the boundary line of the State of California as it should deem most suitable for a railroad line to San Francisco, and was granted, to aid in its construction, every alternate section of public land, not mineral, designated by odd numbers, to the amount of ten alternate sections per mile on each side of its road, to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of the road should be designated by a plat thereof filed in the office of the commissioner of the general land office, with the rights to indemnity within ten mile limits.

This Southern Pacific Company located its line and filed a map of the same in the interior department, Jan. 3, 1867, and thereupon, on the twenty-second day of March, 1867, a withdrawal was directed of the odd sec-

tions that would inure to the road. Subsequently it was shown to the satisfaction of Secretary Browning that the location made by the Southern Pacific was not in accordance with the law of California, under which the company was created, and he, on the fourteenth of July, 1868, revoked his former order of withdrawal and directed a restoration of the lands withdrawn.

Afterwards and on the twentieth of August, 1868, he suspended so much of his order of July 14th as related to the restoration of lands south of San Jose.

Mr. Secretary Cox, November 2, 1869, affirmed the decision of his predecessor that the Southern Pacific was improperly located, and revoked the order of August 20, 1868, and directed a restoration of the lands withdrawn south of San Jose. On the fifteenth of December, 1869, at the request of Senator Howard, chairman of the Senate committee on the Pacific Railroad, and upon a suggestion that legislation was contemplated, he suspended his order of restoration, made on the second of November, as aforesaid.

On the twenty-eighth of June, 1870, Congress passed the following joint resolution:

"Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled: That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the department of the interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said

road, in the manner and within the time provided by law, and notice thereof being given by the company to the secretary of the interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners to the secretary of the interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said secretary of the interior to cause patents to be issued to said company for the sections of land, coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act. (16 Stat. 382.)"

This resolution adopts and makes legal the route which had been selected by the company, and which without such adoption was undoubtedly illegal. It operates as a grant, to the road, *in presenti*, and is the first authority given to the company to construct its road upon the line selected. It makes such grant to the same extent and for the same amount and subject to all the conditions and restrictions specified in the third section of the act of July 27, 1866.

One of those conditions is that the grant shall not operate upon any lands reserved at the time the line of the

road was designated by a plat filed in the office of the commissioner of the general land office.

The lands that were withdrawn for the Central Pacific January 30, 1865, were, at the time such plat was filed in the office of the commissioner, and at the passage of the act and joint resolution, reserved within the meaning of that term.

Wolcott vs. Des Moines, 5 Wall. 681; Moeller vs. Southern Pacific Railroad, decided by Secretary Browning February 9, 1869. They therefore do not go to the railroad. under the grant, and patents should not issue therefor, but they are a part of the public domain, and should be restored to market, and you will take all steps necessary to accomplish that object.

Very respectfully,

C. DELANO,

Secretary.

Hon. Willis Drummond,

Commr. G. L. O.

[Endorsed]: United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company et al. No. 600. Complainants' Exhibit No. 78. Leo Longley, special examiner.

No. 600. United States Circuit Court, Southern District of California. United States of America vs. Southern Pacific Railroad Company. Complainants' Exhibit 78, accompanying third partial report of Special Examiner Longley. Filed August 20, 1896. Wm. M. Van Dyke, Clerk. By E. H. Owen, Deputy.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS et al., Defendants.

No. 600.

Certificate of Examiner.

I certify that the foregoing testimony was taken and proceedings had in the above entitled cause, before me, pursuant to the stipulation and order hereunto prefixed, in the city and county of San Francisco, State of California, in the Hobart building, corner of Market and Montgomery streets, commencing on the second day of July, 1895, and continuing thereafter, at the several times set forth, until completed, in my presence and in the presence of counsel for the respective parties to said cause.

That previous to giving his testimony, each of the witnesses named in said testimony and proceedings was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in said cause.

That said testimony and proceedings were taken down in shorthand writing and transcribed by me, pursuant to said stipulation.

That the testimony of each witness, after being transcribed was read and signed by him, except in those cases

where such reading and signing were, by agreement of said counsel, waived, as in said testimony and proceedings set forth; and that I have retained said testimony and proceedings in my own possession up to the time that I placed them in the hands of Wells, Fargo & Co. for the purpose of delivering the same to the Court for which they were taken.

Accompanying said testimony and proceedings, and forming part thereof, are the following numbered exhibits, towit: Exhibits 1, 164, 178, 179, 180, 181, 182, 183, 184, 185 and 186, which were produced before me and introduced in connection therewith, and which are referred to and specified therein. No other exhibits were produced before me. The exhibits referred to in said testimony and proceedings as having been taken from other causes, were, by agreement of said counsel, introduced in this cause by reference thereto. All other exhibits referred to and specified therein were introduced by reference thereto.

I further certify that I am not attorney, nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof, I have hereunto set my hand this twenty-seventh day of March, A. D. 1896.

STEPHEN POTTER,
Special examiner.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS et al., Defendants.

No. 600.

Testimony.

Testimony on Behalf of Defendants Taken at San Francisco, California, Before Special Examiner Potter.

Stephen Potter, shorthand reporter, Mills building, San Francisco, Cal.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS et al., Defendants.

No. 600.

Stipulation.

It is stipulated by and between the parties to the above-entitled cause, and by and between their respective solic-

itors, that the testimony of the defendants herein, so far as possible, may be taken in the city and county of San Francisco before Stephen Potter, Esq., as special examiner and stenographer.

And it is furthermore stipulated that the necessary order is hereby agreed upon, and shall be obtained from the Court, appointing the said Stephen Potter as special examiner for this purpose; and that the witnesses to be examined in San Francisco in said cause on behalf of the defendants, when sworn by said special examiner, and having testified in the presence of counsel for both parties, and their testimony reported by said Stephen Potter, so acting as special examiner, and taken down by him in shorthand and reduced to writing and signed by said witnesses and returned by him to the clerk of this court, that the same shall be deemed to be regular in all respects.

It is furthermore stipulated that documentary evidence introduced by the defendants, or by the complainant on cross-examination, before said Stephen Potter, special examiner, etc., and marked by him as introduced before and returned by him to the clerk of said court, shall be deemed to have been introduced with due regularity and with full force and effect.

It is furthermore agreed that the taking of testimony pursuant to this stipulation shall commence in the city and county of San Francisco on July 2, 1895, in the Hobart building, corner of Market and Montgomery streets, and shall continue at the convenience of the respective counsel until completed.

The said Stephen Potter is hereby further requested to make a transcript of all proceedings taken before him in pursuance of this stipulation, and to file the original with William M. Van Dyke, clerk of this court.

It is furthermore stipulated that where objections are made by respective counsel to the introduction of any testimony, or to the testimony of any witness, that there after the words, when entered by the said special examiner, "Same objection," shall be deemed to be a complete repetition of the last-named objection in full, and shall be so entered by the special examiner unless otherwise directed by the counsel making the objection.

JOSEPH H. CALL,
Solicitor for complainant, and special assistant United States attorney.

JOSEPH D. REDDING,
Solicitor for defendants.

San Francisco, July 2, 1895.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Complainant,
vs.
S. P. R. R. CO. et als.,
Defendants.
} Nos. 587 and 600.

Order.

In the two above-entitled causes, upon application and consent of the solicitors of all parties in both actions, it is

hereby ordered that Stephen M. Potter, Esq., be, and he is, hereby appointed special examiner in San Francisco to take the testimony of the defendants in the two above-named actions, and to report same to the clerk of this court.

(Signed) ROSS,
Circuit Judge.

July 2, 1895.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS et al., Defendants.
No. 600.

Testimony for Defendant.

Pursuant to the above stipulation, there appeared before me, Joseph H. Call, Esq., solicitor and special United States attorney on behalf of complainants, and Joseph D. Redding, Esq., solicitor for defendants, this second day of July, A. D. 1895, at 10:30 o'clock, A. M., and in reference to the above-entitled cause, the following proceedings took place:

J. L. WILLCUTT, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

Mr. REDDING.—Q. What is your name, residence, and occupation?

A. J. L. Willcutt, secretary of several corporations, among them the Southern Pacific Railroad Company of California; my residence is Oakland.

Q. Were you the secretary of the Southern Pacific Railroad Company in the year 1866? A. No, sir.

Q. When did you assume the duties as secretary of the Southern Pacific Railroad Company?

A. At the date of the consolidation, October, 1870.

Q. Since that time and up to the present, have you been the custodian of the official documents and records of that company? A. I have.

Q. Have you in your official custody the minutes of the meetings of that company, one of the defendants in this action, prior to 1870? A. Yes, sir.

Q. Have you such record and minutes during the year 1866? A. I have.

Q. And you do now produce this record before the examiner at this time? A. Yes, sir.

Q. Congress passed an act on July 27, 1866, which we will call the Atlantic & Pacific Act, but in it there is embraced a grant to the Southern Pacific Railroad Company; will you please state whether the Southern Pacific Railroad Company, one of the defendants in this action, by any resolution of its board of directors, or otherwise, accepted the terms and conditions of this grant by Congress?

(Question objected to by Mr. Call as incompetent, immaterial, irrelevant, and not the best evidence.)

A. Yes, sir, it did.

Q. Will you please read from the official records of this corporation, now produced by you before the examiner, the resolution accepting this grant and its terms?

(Same objection.)

A. At a meeting of the board of directors on November 24, 1866, the following record appeared: "On motion of Mr. Lathrop, it was unanimously resolved that this company will and does hereby accept the terms, conditions, and impositions of the act of the Congress of the United States entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Ocean,' passed at the first session of the thirty-ninth Congress, and that a copy of this resolution of acceptance, certified under the seal of this company, and signed by the president and secretary, be forwarded to and filed with the secretary of the interior."

Mr. REDDING.—The defendants offer in evidence the resolution last read, by a certified copy thereof, and ask that it be marked Defendants' Exhibit No. 1.

(Same objection.)

(A certified copy of this resolution is marked by the special examiner "Defendants' Exhibit No. 1, Stephen Potter, special examiner," and the same is annexed hereto.)

Q. Will you state from the records of this corporation, one of the defendants herein, whether any acknowledgment from the interior department of the receipt by

it of a copy of this resolution was received and entered upon the files of the corporation defendant?

(Same objection.)

A. Yes, sir, there is such a record.

Q. You are still acting as the secretary of the Southern Pacific Railroad Company?

(Same objection.)

A. Yes, sir.

Q. For how many years have you been acting in that capacity?

(Same objection.)

A. Twenty-five years.

Cross-Examination.

Mr. CALL.—Is that the original record of the company containing the record of that meeting? A. Yes, sir.

J. H. WILLCUTT.

Mr. REDDING.—The defendants offer in evidence a certified copy of the letter to Hon. Joseph S. Wilson, commissioner of the general land office, dated San Francisco, September 28, 1866, signed by T. G. Phelps, president Southern Pacific Railroad Company, marked "Master's Exhibit 180" in case No. 68, and ask that it be marked Defendants' Exhibit No. 2.

(Same objection.)

Mr. REDDING.—The defendants next offer in evidence in connection with the last exhibit, a map which accompanied said letter, showing the preliminary survey and general route of the line of proposed road of the Southern Pacific Railroad Company, one of the defendants

herein, from San Francisco, California, to the Colorado river, on the eastern boundary of said State, under the grant of July 27, 1866, marked "Master's Exhibit 179" in case No. 68, and ask that it be marked Defendants' Exhibit No. 3.

(Objected to by Mr. Call as incompetent, immaterial, and irrelevant, and not the best evidence, and upon the further ground that the pretended map offered is not upon the line or any line contemplated or authorized by the act of Congress of July 27, 1866, nor upon a line authorized by the charter of the Southern Pacific Railroad Company.)

Mr. REDDING.—With reference, Mr. Call, to the map offered not being the best evidence, I understand that there is an order of court, and also a stipulation between us that the exhibits out of former cases, which in the former cases were duly authenticated by the interior department, shall be introduced in this case with full force and effect as the originals, is that not so?

Mr. CALL.—Yes, that is my understanding, that that is the arrangement, without any objection from the fact that such exhibits had been offered in another case, and were part of the record in another case.

Mr. REDDING.—In connection with this last exhibit, I offer in evidence on behalf of defendants the certificate of the commissioner of the general land office of January 9, 1882, being a portion of Master's Exhibit 179 in case No. 68, and ask that it be marked Defendants' Exhibit No. 4.

(Same objection.)

JEROME MADDEN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

Mr. REDDING.—I offer in evidence on behalf of defendants certified copy of a letter from O. H. Browning, secretary of the interior, dated Washington, D. C., March 19, 1867, department of the interior, addressed to Hon. James S. Wilson, commissioner of the general land office, ordering a withdrawal of the lands on account or for the benefit of the Southern Pacific Railroad Company, pursuant to the map filed by it on January 3, 1867, and ask that the same may be marked Defendants' Exhibit No. 5.

(Same objection.)

Mr. REDDING.—I offer in evidence on behalf of the defendants certified copy of letter of the commissioner of the general land office, dated the twenty-second day of March, 1867, to the register and receiver of the land office at Visalia, California, transmitting a copy of the map filed by the Southern Pacific Railroad Company on January 3, 1867, and ask that it be marked Defendants' Exhibit No. 6.

(Same objection.)

Q. What is your name, residence, and occupation?

A. Jerome Madden; San Francisco; land agent of the Southern Pacific Railroad Company.

Q. How long have you been connected with the land department of the Southern Pacific Railroad Company?

A. Since about 1871, I think; I was in the employ of the railroad company before the land office of the South-

ern Pacific Railroad Company was regularly organized, and I attended to a great deal of the preliminary business; at that time Mr. B. B. Redding was the land agent, and it went along in that way until after the land office was regularly organized, and then Mr. Redding resigned and I was appointed, I think, on May 10, 1876.

Q. At present you are the land agent of the Southern Pacific Railroad Company?

A. I am now, and have been ever since that time, land agent of the Southern Pacific Railroad Company.

Q. As such land agent, are you the official custodian of the documents, records, and papers of that department? A. I am.

Q. Were you ever employed in connection with the railroad commissioners appointed by the President to inspect and report upon the construction of the Southern Pacific Railroad under its grant of July 27, 1866?

A. I was never employed by the commissioners.

Q. Did you perform any duties in connection with the reports of said commissioners?

A. I was detailed by the Southern Pacific Railroad Company to act as secretary for the United States railroad commissiones, and as such I accompanied them and was present during the examinations and also at the execution of the reports that they made.

Mr. CALL.—I object to the question as incompetent, immaterial, and irrelevant, and to the answer as not responsive to the question, and move to strike out the answer.

Mr. REDDING.—Q. Did you perform any duties on behalf of the railroad commissioners, or for the railroad commissioners in connection with their labor?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

A. I did not.

Q. Did you accompany the railroad commissioners during their inspection of the road as constructed?

(Same objection.)

A. I did.

Q. Did you go over the road with them?

(Same objection.)

A. I did.

Q. Did you see them examining the road?

(Same objection.)

A. I did.

Q. Will you state who made out the reports of the railroad commissioners of the road as constructed?

(Same objection.)

A. In accordance with their directions and requests, I did.

Mr. REDDING.—Mr. Call, I desire to offer in evidence, on behalf of defendants, certified copies of the reports of the railroad commissioners upon the constructed line of railroad of the Southern Pacific Railroad Company under its grant of July 27, 1866. Mr. Jerome Madden has in his custody duplicate originals of these reports. With your permission, I will offer certified copies of the originals by referring to the duplicate originals, have the duplicate originals copied, and send the same on to Washington, and have them certified as being exemplified copies

of those on file, and have them, when so certified, returned to Mr. William M. Van Dyke, the clerk of this court; and I will ask whether introducing them in that way will be satisfactory to you, and if they will be deemed as introduced with the full force and effect as of this date of the originals?

Mr. CALL.—I make no objection to that offer of the certified copies at this time to be filed hereafter as of this date, but saving my other objections.

Mr. REDDING.—I offer on behalf of the defendants certified copy of the report of the railroad commissioners upon their examination of the first thirty miles of the railroad as constructed under the act of July 27, 1866, from San Jose to Gilroy, dated October 29, 1870, and ask that it be marked Defendants' Exhibit No. 7.

(Objected to Mr. Call as incompetent, immaterial, and irrelevant, and not the best evidence of any definite location of the line therein designated, and upon the further ground that the line of route mentioned in the said report is upon a route not authorized or contemplated by the act of Congress of July 27, 1866, and not authorized by the articles of incorporation of the Southern Pacific Railroad Company; and upon the further ground that no map of definite location of said railroad has been filed and approved by the interior department; and the further objection that it does not appear that the alleged commissioners were authorized to make any such examination or report.)

Mr. REDDING.—I will state, Mr. Call, that the maps of definite location and constructed route will be introduced after these reports. I am introducing these re-

ports in connection with Mr. Madden's testimony at this time, in order to expedite the proceedings and to permit Mr. Madden to attend to his duties in connection with the land department without delay.

I offer in evidence, on behalf of the defendants, the amended report of the first examination by the United States railroad commissioners, of the Southern Pacific Railroad, under its grant of July 27, 1866, from San Jose to Gilroy, being the first thirty miles, dated December 29, 1870, and ask that it be marked Defendants' Exhibit No. 8.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners upon their second examination of the road of the Southern Pacific Railroad Company as constructed under the act of July 27, 1866, dated September 12, 1871, and ask that it be marked Defendants' Exhibit No. 9.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners upon their third examination of the railroad as constructed under the act of July 27, 1866, dated September 14, 1872, from Goshen to a point 29 south, and ask that it be marked Defendants' Exhibit No. 10.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners upon their fourth examination of the road of the Southern Pacific Railroad Company as constructed under the act of July 27, 1866, of twenty miles, being the twentieth

to the fortieth miles south from Goshen, dated July 23, 1873, and ask that it be marked Defendants' Exhibit No. 11.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners upon their fifth examination of the road of the Southern Pacific Railroad Company, as constructed under the act of July 27, 1866, dated September 19, 1874, of twenty miles, from the fortieth to the sixtieth mile south from Goshen, and ask that it be marked Defendants' Exhibit No. 12.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners of their sixth examination of the road of the Southern Pacific Railroad Company as constructed under the act of July 27, 1866, dated August 3, 1875, of twenty miles, from the sixtieth to the eightieth mile south from Goshen, and ask that it be marked Defendants' Exhibit No. 13.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners upon their seventh examination of the road of the Southern Pacific Railroad Company as constructed under the act of July 27, 1866, dated May 27, 1876, of twenty miles, from the eightieth to the one hundredth mile south from Goshen, and ask that it be marked Defendants' Exhibibt No. 14.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners upon their eighth examination of the road of the Southern Pacific Railroad Company as constructed under the act of July 27, 1866, dated January 2, 1877, from Goshen to a point twenty miles west therefrom, and ask that it be marked Defendants' Exhibit No. 15.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners upon the eighth examinatin of the road of the Southern Pacific Railroad Company as constructed under the act of July 27, 1866, being an additional report, dated January 25, 1877, from Goshen to a point twenty miles west therefrom, and ask that it be marked Defendants' Exhibit No. 16.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners upon their ninth examination of the road of the Southern Pacific Railroad Company as constructed under the act of July 27, 1866, dated February 9, 1877, of twenty miles, from the twentieth to the fortieth mile west from Goshen, and ask that it be marked Defendants' Exhibit No. 17.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners upon their tenth examination of the road of the Southern Pacific Railroad Company, as constructed under the act of July 27, 1866, from the one hundredth to the one hundred and forty-one and sixty-six one-hundredths mile

from Goshen, dated January 30, 1878, and ask that it be marked Defendants' Exhibit No. 18.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners upon their eleventh examination of the road of the Southern Pacific Railroad Company as constructed under the act of July 27, 1866, from the one hundred and forty-one and sixty-six one-hundredths mile to the three hundred and eighty-four and sixteen one-hundredths mile from Goshen, being from Mojave to the Needles, dated December 27, 1884, and ask that it be marked Defendants' Exhibit No. 19.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence certified copy of the report of the railroad commissioners upon their twelfth examination of the road of the Southern Pacific Railroad Company as constructed under the act of July 27, 1866, dated April 2, 1889, from Huron to Alcalde, and ask that it be marked Defendants' Exhibit No. 20.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the appointment of Jerome Madden as land agent of the Southern Pacific Railroad Company, marked "Exhibit No. 1," before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 21.

(Objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

Mr. REDDING.—On behalf of the defendants I next offer in evidence the deposition of Jerome Madden taken

on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 22.

Mr. CALL.—That is objected to upon the grounds set forth in the said deposition, and I make no other objection to the offer of this depositon, with the understanding that the government may, if so advised, introduce depositions taken in said cause No. 184, in this case.

Mr. REDDING.—That is agreeable.

Mr. REDDING.—Defendants next offer in evidence the deposition of William Hood, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 23.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the deposition of G. L. Lansing, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 24.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence deposition of Isaac E. Gates, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 25.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the deposition of Charles F. Crocker, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 26.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the deposition of C. J. Hillyer, taken on behalf of de-

fendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 27.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence deposition of William A. Hayes, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 28.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the deposition of J. L. Willcutt, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 29.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the deposition of Charles J. Wilder, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 30.

(Same objection.)

Mr. REDDING.—Mr. Call, will you agree that the deposition of Jerome Madden as offered shall be deemed in with full force and effect as his deposition, omitting therefrom those portions of said deposition which refer to the lands involved in suit No. 184, and do not refer to the lands involved in this case?

Mr. CALL.—That is agreeable, saving my objections heretofore noted.

(A recess was then taken until 2:15 P. M.)

July 2, 1895. Afternoon Session.

Mr. REDDING.—I offer on behalf of defendants map of the general route of the Southern Pacific Railroad under

its grant from Congress of March 3, 1871, from Tehachapi Pass by way of Los Angeles to the Colorado river, with letter of the secretary of the interior to the commissioner of the general land office of April 3, 1871, endorsed thereon, being "Exhibit No. 45" before Examiner Lamme in case No. 184, and with the same I offer the certificates attached to the said map and the said letter showing them to be true exemplifications of the originals on file, and ask that the same be marked Defendants' Exhibit No 31.

(Objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

Mr. REDDING.—I also offer in evidence on behalf of the defendants letter dated April 21, 1871, from the commissioner of the general land office to the register and receiver at Los Angeles, marked "Master's Exhibit No. 132" in case No. 68, and ask that it be marked Defendant's Exhibit No. 32.

(Same objection.)

Mr. REDDING.—I also offer in evidence on behalf of defendant's letter from Walter H. Smith, acting secretary, dated Washington, April 3, 1871, addressed to Charles Crocker, president Southern Pacific Railroad Company, marked "Defendant's Exhibit before the Special Examiner No. 65" in case No. 184, together with the certificate of Stephen Potter, special examiner in case No. 184, and ask that the same be marked Defendant's Exhibit No. 33.

(Same objection.)

Mr. REDDING.—I next offer in evidence on behalf of the defendants the deposition of M. C. Pope, taken on be-

half of the defendants in case No. 184, and ask that it be marked Defendant's Exhibit No. 34.

(Objection to by Mr. Call upon the grounds set forth in said deposition, without further objection to the offer of this deposition, with the understanding that the government may, if so advised introduce depositions taken in said case No. 184 in this case.)

Mr. REDDING.—Defendants next offer in evidence the map of the constructed line of the Southern Pacific Railroad Company through Soledad canyon, being Exhibit 55 before Examiner Potter in case No. 184, and ask that it be marked Defendant's Exhibit No. 35.

(Objected to by Mr. Call as incompetent, immaterial, and irrelevant, and not the best evidence.)

Mr. REDDING.—Defendants next offer in evidence map and profile of the constructed line of the Southern Pacific Railroad Company from section 3, township 2 north, range 15 west to section 17, township 11 north, range 12 west, being Exhibit No. 59 before Examiner Potter in case No. 184, and ask that it be marked Defendant's Exhibit No. 36.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map showing the definite location and constructed line of the Southern Pacific Railroad Company under its grant of March 3, 1871, from San Fernando to Spadra, being Exhibit No. 60 before Examiner Potter in case No. 184, with the certificate of exemplification attached thereto, and ask that the same be marked Defendants' Exhibit No. 37.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map showing the definite location and constructed line of the Southern Pacific Railroad Company, under its grant of March 3, 1871, from Spadra to San Gorgonio, with the certificate of exemplification attached thereto, being Exhibit No. 61 before Examiner Potter in case No. 184, and ask that the same be marked Defendants' Exhibit No. 38.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map showing the definite location and constructed line of the Southern Pacific Railroad Company from San Gorgonio to Indian Wells, under its grant of March 3, 1871, with certificate of exemplification attached thereto, being Exhibit No. 62 before Examiner Potter in case No. 184, and ask that the same be marked Defendant's Exhibit No. 39.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map showing the definite location and the constructed line of the Southern Pacific Railroad Company under its grant of March 3, 1871, from Indian Wells to Yuma, with certificate of exemplification attached thereto, being Exhibit No. 63 before Examiner Potter in case No. 184, and ask that it be marked Defendant's Exhibit No. 40.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map showing the definite location and the constructed line of the first and second sections of the Southern Pacific Railroad Company's branch line, east from San Fer-

nando, California, together with the twenty and thirty-mile adjusted permanent limits, being Exhibit No. 38 before Examiner Lamme in case No. 184, together with the authentication and exemplification of the same, and ask that it be marked Defendant's Exhibit No. 41.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map showing the definite location and the constructed line of the fourth section of the Southern Pacific Railroad Company under its grant of March 3, 1871, and the definite location and construction of that section of the grant to the Southern Pacific Railroad Company of July 27, 1866, so far as the lands in controversy are concerned, together with the twenty and thirty-mile limits of both grants, together with the certificate of exemplificaion of the same, being Exhibit No. 39 before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 42.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of the report of the United States Railroad Commissioners, dated April 7, 1874, and showing the approved report upon the construction of the first section of fifty miles of the railroad and telegraph line of the Southern Pacific Railroad Company, under the Act of March 3, 1871, commencing at a point in the northwest quarter of section 3, township 2 north, range 15 west, S. B. M., thence running in a southeasterly direction to the city of Los Angeles, and thence in an easterly direction and ending at the termination of the fifty miles

therefrom, at a point near the northeast quarter of section 27, township 1 south, range 9 west, S. B. M., together with the certificate of William H. Sims, acting secretary of the interior department, exemplifying the same, dated Washington, D. C., September 30, 1893, and also the approval of said report by the secretary of the interior, addressed to the president of the United States, and the approval of the president of the United States attached to said report, being "Defendants' Exhibit before the Special Examiner, No. 29," in case No. 184, and ask that it be marked Defendants' Exhibit No. 43.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of the report of the United States railroad commissioners of October, 1875, showing the approved construction of the two sections of said last-mentioned railroad, commencing at the point last-named and ending at a point in the southwest quarter of section 4, township 3 north, range 1 west, S. B. M., together with the certificate of exemplification of the same of William H. Sims, acting secretary of the interior department, dated Washington, D. C., September 30, 1893, and also the approval of the said report by the secretary of the interior, addressed to the president of the United States, and the approval of the president of the United States attached to said report, being marked Exhibit 30 before Examiner Potter in case No. 184, and ask that the same be marked Defendants' Exhibit No. 44.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of the report of the United States rail-

road commissioners of June, 1876, showing the approved construction of the line of railroad last-named, under said act, commencing at the termination of section 2, and ending at a point at the termination of section 2, and ending at a point in the southwest quarter of section 24, in township 5 south, range 7 east, S. B. M., together with the certificate of exemplification thereof of William H. Sims, acting secretary of the interior department, dated Washington, D. C., October 2, 1893, and also the approval of said report by the secretary of the interior addressed to the president of the United States, and the approval of the president of the United States attached to said report, and marked Exhibit 31 before Examiner Potter in case No. 184, and ask that the same be marked Defendant's Exhibit No. 45.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of the report of the United States railroad commissioners of February, 1877, showing the approved construction of the road, commencing at the initial point of section No. 1 of said railroad heretofore reported upon, and ending in the northeast quarter of section 17, township 11 north, range 12 west, S. B. M., together with the certificate of the exemplification of William H. Sims, acting secretary of the interior department, dated Washington, D. C., October, 1893, and also the approval of said report by the secretary of the interior, addressed to the president of the United States, and the approval of the president of the United States attached to said report, marked Defendants' Exhibit No.

32 before Examiner Potter in case No. 184, and ask that the same be marked Defendant's Exhibit No. 46.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of the report of the United States railroad commissioners showing the approved construction of the fifth section of said Southern Pacific Railroad, commencing at the termination of section 3, and ending at the southern boundary of the State of California in the center of the Colorado river, together with the certificate of exemplification thereof of William H. Sims, acting secretary of the interior department, dated Washington, D. C., October 2, 1893, together with the approval thereof by the secretary of the interior, and his letter to the president of the United States, and the approval of the president of the United States attached to said report, marked Exhibit No. 33 before Examiner Potter in case No. 184, and ask that the same be marked Defendant's Exhibit No. 47.

(Same objection.)

Mr. REDDING.—In connection with the above reports of the constructed line of the Southern Pacific Railroad Company under the grant of March 3, 1871, from Tehachapi by way of Los Angeles to Fort Yuma, defendants offer in evidence exemplified copy of map and profile of section No. 4 of the Southern Pacific Railroad and Telegraph line, authorized by the twenty-third section of the Texas-Pacific Railroad Act, approved March 3, 1871, commencing at a point in the northwest quarter of section 3, township 2 north, range 15 west, S. B. M., and running

thence in a northerly direction 78.59 miles to a point in the northeast quarter of section 17, township 11 north, range 12 west, S. B. M., showing the definite location and construction of the road from its initial point at Mojave to said northeast quarter of section 17, township 11 north, range 12 west, the same being filed with the report of the railroad commissioners upon the said road so constructed, heretofore introduced in evidence in case No. 184 in this court, and therein marked "Defendants Exhibit before the special examiner No. 59, Stephen Potter, special examiner," and ask that it be marked Defendants' Exhibit No. 47 a.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence in connection with the above reports of the constructed line of the Southern Pacific Railroad Company, under the grant of March 3, 1871, from Tehachapi by way of Los Angeles to Fort Yuma, exemplified copy of map and profile of section No. 1 of the Southern Pacific Railroad and telegraph line, authorized by the twenty-third section of the Texas-Pacific Railroad Act, approved March 3, 1871, commencing at a point in the northwest quarter of section 3, township 2 north, range 15 west, S. B. M., and running thence in a southeasterly direction to the city of Los Angeles, and thence in an easterly direction to a point in the northeast quarter of section 27, township 1 south, range 9 west, S. B. M., showing the definite location and construction of the road between said points, the same being filed with the report of the railroad commissioners upon the said road so constructed, heretofore

introduced in evidence in case No. 184, in this court, and therein marked "Defendants' Exhibit before the special examiner No. 60, Stephen Potter, special examiner," and ask that it be marked Defendants' Exhibit No. 47 b.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence in the same connection, exemplified copy of map and profile of section No. 2 of the Southern Pacific Railroad and telegraph line, authorized by the twenty-third section of the Texas-Pacific Railroad Act, approved March 3, 1871, commencing at a point in the northeast quarter of section 27, township 1 south, range 9 west, S. B. M., and running thence in a southeasterly direction to a point in the southwest quarter of section 4, township 3 south, range 1 west, S. B. M., showing the definite location and construction of the road between said points, the same being filed with the report of the railroad commissioners upon the said road so constructed, heretofore introduced in evidence in case No. 184 in this court, and therein marked "Defendants' Exhibit before the special examiner No. 61, Stephen Potter, special examiner," and ask that it be marked Defendants' Exhibit No. 47 c.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence in the same connection exemplified copy of map and profile of a section of the Southern Pacific Railroad and telegraph line, authorized by the twenty-third section of the Texas-Pacific Railroad Act, approved March 3, 1871, commencing at a point in the southwest quarter of section 4, township 3 south, range 1 west, S. B. M., running thence

in a southeasterly direction 50 miles to a point in the southwest quarter of section 24, township 5 south, range 7 east, S. B. M., showing the definite location and construction of the road between said points, the same being filed with the report of the railroad commissioners upon the said road so constructed, heretofore introduced in evidence in case N. 184 in this court, and therein marked "Defendants' Exhibit before the special examiner, No. 62, Stephen Potter, special examiner," and ask that it be marked Defendants' Exhibit No. 47 d.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence in the same connection, exemplified copy of map and profile of a section of the Southern Pacific Railroad and telegraph line, authorized by the twenty-third section of the Texas-Pacific Railroad Act, approved March 3, 1871, commencing at a point in the southwest quarter of section 24, township 5 south, range 7 east, S. B. M., running thence in a southeasterly direction 118.37 miles to a point in the southeast quarter of section 26, township 16 south, range 22 east, S. B. M., to Fort Yuma showing the definite location and construction of the road between said points, the same being filed with the report of the railroad commissioners upon the said road so constructed, heretofore introduced in evidence in case No. 184 in this court, and therein marked "Defendants' Exhibit before the special examiner No. 63, Stephen Potter, special examiner," and ask that it be marked Defendants' Exhibit No. 47 e.

(Same objection.)

(Whereas, the defendants purpose to procure certified copies of certain maps and reports from the public records at Washington, it is agreed that the defendants may now offer in evidence such certified copies, and when so procured and filed, to be of the same effect as if now produced, subject to the objections hereinafter made.)

Mr. REDDING.—With further reference to the approved location and construction of the railroad by the Southern Pacific Railroad Company, under the Act of Congress of March 3, 1871, from a pont at or near Tehachapi Pass by way of Los Angeles to Fort Yuma on the Colorado river, the defendants refer to the annual reports of the secretary of the interior for the years 1875, 1876, 1877, and 1878, showing therein that the records of the interior department set forth that the said road upon the line authorized by the Act of March 3, 1871, has been constructed and accepted by the president of the United States as having been constructed and completed in all respects as required by law, as follows:

The first section of 50 miles accepted May 9, 1874; the second section of 50 miles accepted October 11, 1875; the third section of 50 miles accepted July 21, 1876; the fourth section of 78.59 miles accepted March 2, 1877; and the fifth section of 118 miles accepted in January, 1878, completing the road to the Colorado river.

Mr. CALL.—Complainants object to the whole of such evidence and to each item thereof on the ground that the same is incompetent, immaterial, and irrelevant.

Mr. REDDING.—Defendants next offer in evidence map from the surveyor general's office of township 5

north, range 11 west, being Exhibit No. 123 before Examiner Potter, and ask that it be marked Defendants' Exhibit No. 48.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map from the surveyor general's office of township 5 north, range 12 west, being Exhibit No. 124 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 49.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map from the surveyor general's office of township 4 north, range 13 west, being exhibit No. 125 before examiner Potter, in case No. 184, and ask that it be marked Defendants' Exhibit No. 50.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map from the surveyor general's office of township No. 4 north, range 14 west, being Exhibit No. 126 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 51.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence maps from the surveyor general's office of township 4 north, range 15 west, being Exhibit No. 127 before Examiner Potter in case No. 184, and ask that it be marked Defendant's Exhibit No. 52.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map from the surveyor general's office of township 4 north, range 16 west, being Exhibit No. 128 before Ex-

aminer Potter in case No. 184, and ask that it be marked Defendant's Exhibit No. 53.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map from the surveyor general's office of township 4 north, range 17 west, being Exhibit No. 129 before Examiner Potter in case No. 184, and ask that it be marked defendants' Exhibit No. 54.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map No. 2 of Hancock's survey, being Exhibit No. 130 before Examiner Potter in case No. 184, and ask that it be marked Defendant's Exhibit No. 55.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence map showing constructed line of Southern Pacific Railroad and alleged surveyed line of Atlantic & Pacific Railroad through Soledad Canyon, being Exhibit No. 50 before Examiner Lamme in case No. 184, and ask that it be marked Defendant's Exhibit 56.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exhibits before Examiner Lamme in case No. 184, Nos. 51 to 69 inclusive, being photographs of Soledad Canyon, and ask that they be marked Defendant's Exhibits Nos. 57 to 75, inclusive.

(Same objection to each.)

Mr. REDDING.—Defendants next offer in evidence the deposition of L. H. Long, taken in case No. 184 on behalf of defendants, in connection with the photographs of

Soledad Canyon, and ask that it be marked Defendants' Exhibit No. 76.

(Objected to by Mr. Call upon the grounds set forth in said deposition, without any further objection to the offer of this deposition, with the understanding that the government may, if so advised, introduce depositions taken in said case No. 184, in this case.)

Mr. REDDING.—Defendants next offer in evidence deposition of E. W. Jensen, taken on behalf of defendants in case No. 184, in connection with the photographs of Soledad canyon, and ask that it be marked Defendants' Exhibit No. 77.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the deposition of William H. Pratt, surveyor general, taken on behalf of defendants in case No. 184, and ask that it be marked defendant's exhibit No. 78.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the deposition of W. J. McGee, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 79.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the deposition of W. R. Spencer taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 80.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence deposition of D. A. Chambers, taken on behalf of de-

fendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 81.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence deposition of John B. Bloss, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 82.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence deposition of John B. Thompson, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 83.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence deposition of Mauchlin Niven, taken on behalf of the defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 84.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence deposition of Frank B. Orme, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 85.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence deposition of H. W. Gardiner, so far as taken by the defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 86.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence deposition of E. N. Robinson, taken on behalf of defend-

ants in case No. 184, and ask that it be marked Defendants' Exhibit No. 87.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the proceedings taken in case No. 184 before Charles C. Draper, special examiner at Lebanon, Missouri, in reference to the taking of the deposition of Jacob Blickensderfer, Jr., and son, and ask that it be marked Defendants' Exhibit 88.

(Same objection.)

(The further hearing of the matter was then continued by consent until July 3, 1895, at 10:15 o'clock A. M.)

Wednesday, July 3, 1895.

Mr. REDDING.—Mr. Call, will it be agreeable for you to waive the signature of Mr. Jerome Madden to his deposition?

Mr. CALL.—Certainly.

JEROME MADDEN.—(Recalled.)

Mr. REDDING.—Q. You stated on your examination yesterday that in accordance with the directions and requests of the railroad commissioners appointed by the President of the United States to inspect the constructed road of the Southern Pacific Railroad Company under its grant of July 27, 1866, you had something to do with the making out of the reports of the railroad commissioners; will you state under what authority you acted, and what duties you did perform in more detail than you stated yesterday?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. When and as the commissioners were appointed, a form of report was transmitted by the department of the interior to them with their several appointments; they, the commissioners, not being good penmen, requested the directors of the Southern Pacific Railroad Company to allow me to go with them and write the reports, which I accordingly did, at the request of the commissioners.

Mr. CALL.—I move to strike out the answer as not being responsive to the question, and as being an attempt to prove by parol a matter of public record.

Mr. REDDING.—I asked you the following question yesterday: "Mr. Redding.—Q. Did you perform any duties on behalf of the railroad commissioners, or for the railroad commissioners, in connection with their labor? (Question objected to by Mr. Call as incompetent, immaterial and irrelevant.) A. I did not." Do you desire to correct that answer?

(Same objection.)

A. I do.

Q. What is your answer to the question, as you desire to correct it?

(Same objection.)

A. My correct answer is I did.

Cross-Examination.

Mr. CALL.—Q. You were acting at the time for the Southern Pacific Railroad Company, under their employment, were you not?

A. I was in the employ of the Southern Pacific Railroad, but I was acting for the commissioners at their request, and with the consent of the Southern Pacific Railroad Company.

Q. Did you receive any compensation from the United States? A. I did not.

Redirect Examination.

Mr. REDDING.—Q. The plaintiff in this case has alleged the fact, and attached to its bill of complaint a schedule of those lands involved in this action which have been patented by the government of the United States to the Southern Pacific Railroad Company; the answer of the defendant admits that a large number of acres of land involved in this cause have been patented, and admits that prior to the commencement of this suit patents were duly issued to the said company for 12,318.77 acres of the land described in Exhibit A, annexed to the plaintiff's bill of complaint; as land agent of the Southern Pacific Railroad Company, have you in your possession the original patents, or any of them, issued by the government of the United States to the Southern Pacific Railroad Company for lands embraced within the grant of Congress to it of July 27, 1866? A. I have.

Q. Will you produce before the examiner such an original patent for lands within the place limits of that last-named grant?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. Here is a patent No. 22 to the Southern Pacific

Railroad Company for lands within the twenty-mile limits of its grants in Los Angeles, Independence, San Francisco, and Visalia land districts, dated the tenth of July, 1894.

Q. Is that a patent for lands under the grant of Congress to the Southern Pacific Railroad Company of July 27, 1866, known as the main line grant?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. It is.

Mr. REDDING.—The defendants offer in evidence Patent No. 22, Southern Pacific Railroad Company lands, primary limits, and ask that it be marked Defendants' Exhibit No. 89.

(Same objection.)

Mr. REDDING.—Mr. Call, will you stipulate that the examiner may make a certified copy of this patent and return the original to Mr. Madden for the use of his land department, and also that in making the copy he may eliminate the description of those lands which are not involved in this case?

Mr. CALL.—That is agreeable.

Mr. REDDING.—And that when so eliminated the patent shall stand with full force and effect?

Mr. CALL.—Yes, subject to objections made.

(Patent No. 22, Southern Pacific Railroad Company land, primary limits, is marked by the special examiner "Defendants' Exhibit No. 89, Stephen Potter, special examiner." and a certified copy thereof, so far as it covers lands involved in this suit, is attached hereto.)

Mr. REDDING.—Q. Have you also an original patent for lands within the indemnity limits, patented to the Southern Pacific Railroad Company under its grant of July 27, 1866?

(Same objection.)

A. I have; here is Patent No. 25 for lands within the indemnity limits of the grant of July 27, 1866, to the Southern Pacific Railroad Company lying in Independence, San Francisco, Visalia, Los Angeles and Stockton land districts and dated 1894.

Mr. REDDING.—Defendants offer this in the same manner, and with the same stipulation as the last exhibit, and ask that it be marked Defendants' Exhibit No. 90.

(Same objection.)

(Patent No. 25 for lands within the indemnity limits patented to the Southern Pacific Railroad Company is marked by the special examiner "Defendants' Exhibit No. 90, Stephen Potter, special examiner," and a certified copy thereof, so far as it covers the lands involved in this suit, is attached hereto.)

Q. Have you an original patent of lands to the Southern Pacific Railroad Company within the place or twenty-mile limit of its grant from Congress under the act of March 3, 1871?

(Same objection.)

A. I have; here is one numbered 25 to the Southern Pacific Railroad Company within the twenty-mile limit of the grant to it of March 3, 1871, lying in the Los Angeles land district, and dated the fifteenth of August, 1894.

Mr. REDDING.—Defendants offer this in evidence with the same stipulation as to the last exhibit and ask that it be marked Defendants' Exhibit No. 91.

(Same objection.)

(Patent No. 25 to the Southern Pacific Railroad Company of lands within the twenty-mile limit is marked by the special examiner "Defendants' Exhibit No. 91, Stephen Potter, special examiner," and a certified copy thereof, so far as it covers lands involved in this suit, is attached hereto.)

Q. Have you a form of patent for lands within the indemnity limits patented to the Southern Pacific Railroad Company under its grant of March 3, 1871, known as the branch line grant?

(Same objection.)

A. I have; here is Patent No. 21, issued to the Southern Pacific Railroad Company under the act of March 3, 1871, for lands within the indemnity limits of said grant in the Los Angeles land district, dated February 13, 1892.

Mr. REDDING.—Defendants offer this patent in evidence and ask that it be marked Defendants' Exhibit No. 92.

(Same objection.)

(Patent No. 21 for lands within the indemnity limits to the Southern Pacific Railroad Company is marked by the special examiner, "Defendants' Exhibit No. 92, Stephen Potter, special examiner," and a certified copy thereof, so far as it covers lands involved in this suit, is attached hereto.)

Q. Are these original patents from the government of the United States?

(Same objection.)

A. They are.

Q. Do these patents that you have introduced represent the forms used invariably in these two grants with reference to these classes of lands?

(Same objection.)

A. The form are the same; there may be some different verbiage in the granting clause; substantially, they are alike.

Mr. REDDING.—Mr. Call, I have introduced these patents for the purpose of having in evidence the preambles of the same, and also to exhibit to the Court the forms under which the government has patented the lands in controversy to the defendants. Do I understand that you intend to introduce the patents themselves covering the lands in controversy, on behalf of the government?

Mr. CALL.—Yes, it is our purpose to introduce in evidence the patents for the lands described in Exhibit A of the bill of complaint.

Mr. REDDING.—Defendants offer in evidence the deposition of Quincy A. Pearson, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 93.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further grounds particularly specified in said deposition.)

Mr. REDDING.—Defendants next offer in evidence map issued by the war department of United States geographical surveys west of the one hundredth meridian, part of southwestern California, filed in evidence by de-

fendants on final hearing in case No. 184, and ask that it be marked Defendants' Exhibit No. 94.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and because not authenticated as being a copy of any record.)

Mr. REDDING.—Defendants next offer in evidence map issued by the war department of the United States geographical survey west of the one hundredth meridian, part of southwestern California, with line of Atlantic & Pacific Railroad added thereto, being Exhibit No. 134, filed by defendants in connection with the testimony of John W. Parker in case No. 184, and ask that it be marked Defendants' Exhibit No. 95.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the deposition of John W. Parker, taken on behalf of defendants in case No. 184, and the proceedings of the Court just prior to the taking of said deposition, and ask that it be marked Defendants' Exhibit No. 96.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further particular grounds set forth in said deposition.)

Mr. REDDING.—Defendants next offer in evidence map of the Atlantic & Pacific Railroad through Soledad Canon, being Exhibit No. 135, in case No. 184, filed by defendants, in connection with the testimony of John W. Parker, and ask that it be marked Defendants' Exhibit No. 97.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant.)

Mr. REDDING.—Defendants next offer in evidence deposition of William Solomon, taken on behalf of defendants in case No. 184, together with the exhibits attached thereto, and ask that the same be marked Defendants' Exhibit No. 98.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further grounds particularly specified in said deposition

Mr. REDDING.—Defendants next offer in evidence the deposition of E. H. Lamme, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 99.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence deposition of Asa P. French, taken on behalf of defendants in case No. 184, and ask that it be marked Defendants' Exhibit No. 100.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence endorsements by the interior department on letter received from C. J. Hillyer, dated March 8, 1872, being Exhibit B attached to deposition of M. C. Pope, taken on behalf of defendants before Hugh M. Sterling, in Washington, in case No. 184, and ask that the same be marked Defendants' Exhibit No. 101.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exhibit before Patrick A. Nolan of New York on taking of deposition of William Solomon in case No. 184, and ask that it be marked Defendants' Exhibit N. 102.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exhibit before Hugh M. Sterling on taking of deposition of William J. McGee in case No. 184, and ask that it be marked Defendants' Exhibit No. 103.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exhibit before Hugh M. Sterling attached to the deposition of D. A. Chambers, in case No. 184, and ask that it be marked Defendants' Exhibit No. 104.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence report of Stephen Potter, special examiner, including the exhibits filed before him on behalf of defendants in case No. 184, excepting therefrom the description of lands involved in that action but not this, and ask that the same be marked Defendants' Exhibit No. 105.

(The introduction of said report and each of said exhibits is objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further particular grounds specified in the report of said Stephen Potter.)

Mr. REDDING.—Defendants next offer in evidence report of E. H. Lamme, Esq., standing examiner, including the exhibits filed before him on behalf of defendants in case No. 184, and ask that the same be marked Defendants' Exhibit No. 106.

(Same objection to said report and each of said exhibits.)

Mr. REDDING.—Defendants next offer in evidence report of Hugh M. Sterling, including the exhibits attached to the deposition of M. C. Pope, taken before him

on behalf of defendants, at Washington, in case No. 184, and ask that the same be marked Defendants' Exhibit No. 107.

(Same objection to said report and each of said exhibits.)

Mr. REDDING.—Defendants next offer in evidence report of testimony taken before E. H. Lamme, standing master and examiner in chancery in case No. 184, on behalf of defendants, and ask that the same be marked Defendants' Exhibit No. 108.

Mr. CALL.—Mr. Redding, does that include an offer of the exhibits offered in evidence by the defendants?

Mr. REDDING.—Yes, sir.

Mr. CALL.—I object to the exhibits offered in evidence by the defendants referred to in said report, and to each of them, as incompetent, immaterial and irrelevant, and upon the further grounds specified in said report.

Mr. REDDING.—Defendants next offer in evidence field notes of Henry Hancock, being Exhibit No. 131, before examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 109.

(Same objection.)

Mr. REDDING.--Defendants next offer in evidence exhibits filed by defendants in connection with the testimony of John W. Parker in case No. 184, and ask the same be marked Defendants' Exhibit No. 110.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and upon the further grounds specified in the report of said examiner.)

(The further hearing of the matter was then continued by consent until July 5, 1895, at 10:30 A. M.)

San Francisco, July 5, 1895.

Mr. CALL.—Mr. Redding, in consenting, at the meeting of day before yesterday, to the making of copies of the patents by the examiner, I did not intend to waive any objection which I had made to the originals.

Mr. REDDING.—You meant that the copies should be considered as equivalent to the originals?

Mr. CALL.—Yes, sir; that they should be considered as equivalent to the originals, but without waiving any objections that I had made to the introduction of the patents.

Mr. REDDING.—Defendants offer in evidence map of location of the Atlantic & Pacific Railroad Company in the State of California, filed in the interior department in October, 1869, the same having been Exhibit No. 88, before examiner Lamme, in case No. 184, together with the certificate of exemplification thereof, and ask that the same be marked Defendants' Exhibit 111.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that said map purports to designate a line of route not contemplated or authorized by the act of Congress of July 27, 1866, nor authorized by the charter of the Atlantic & Pacific Railroad Company; and upon the further ground that said map has been rejected by the interior department of the United States and never filed therein; and upon the further ground that after the refusal to file or approve said map by the interior department said Atlantic & Pacific Railroad Company abandoned said line; and upon the further ground that said pretended map does

signate the whole of the line of route of said railroad company.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter dated October 25, 1869, from the president of the Atlantic & Pacific Railroad Company to the commissioner of the general land office, being Exhibit No. 70, before examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 112.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter dated November 12, 1869, from the commissioner of the general land office to the president of the Atlantic & Pacific Railroad Company, being Exhibit No. 71, before examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 113.

Mr. REDDING. —Defendants next offer in evidence exemplified copy of letter dated March 10, 1873, from the attorney of the Atlantic & Pacific Railroad Company to the secretary of the interior, being Defendants' Exhibit No. 83 before examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 114.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and as a letter not authorized by the Atlantic & Pacific Railroad Company, and in direct antagonism to the resolutions of the board of directors of the Atlantic & Pacific Railroad Company.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter dated January 5, 1885, from the attorney of the Atlantic & Pacific Railroad Company to the secretary of the interior, and the reply of the secre-

tary of the interior thereto, being Exhibit No. 84, before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 115.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter dated November 11, 1869, of the secretary of the interior to the commissioner of the general land office accompanying the map of the Atlantic & Pacific Railroad Company of 1869, being a part of Exhibit No. 88 before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 116.

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of August 5, 1868, being Exhibit No. 66 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 117.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of September 26, 1868, being exhibit No. 67 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 118.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of August 31, 1870, being Exhibit No. 68 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 119.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of September 1, 1876, being Exhibit No. 69 before Examiner Potter in case No. 184 and ask that it be marked Defendants' Exhibit No. 120.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copies of a series of letters of the interior department from July 13, 1878, to May 12, 1881, being Exhibit No. 70 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 121.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of a letter of the interior department of October 2, 1868, being Exhibit No. 71 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 122.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of a letter of the interior department of November 2, 1881, being Exhibit No. 72 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 123.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of a letter of the interior department of February 1, 1882, being Exhibit No. 73 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 124.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of a letter of the interior department of May 20, 1882, being Exhibit No. 74 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 125.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of November 9, 1882, being Exhibit No. 75 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 126.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of August 11, 1883, being Exhibit No. 76 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 127.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of a letter of the interior department of April 3, 1884, being Exhibit No. 77 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 128.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of September 6, 1884, being Exhibit No. 78 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 129.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of a letter of the interior department of February 10, 1885, being Exhibit No. 79 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 130.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy if a letter of the interior department of May 22, 1885, being Exhibit No. 80 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 131.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of a letter of the interior department of December 21, 1885, being Exhibit No. 81 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 132.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of a letter of the interior department of August 30, 1886, being Exhibit No. 82 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 133.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of a letter of the interior department of May 7, 1887, being Exhibit No. 83 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 134.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of a letter of the interior department of May 7, 1887, being Exhibit No. 84 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 135.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of September 17, 1887, being Exhibit No. 85 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 136.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of April 2, 1888, being Exhibit No. 86 before Examiner Potter in case No. 184, and ask that is be marked Defendants' Exhibit No. 137.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of June 4, 1889, being Exhibit No. 87 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 138.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of October 24, 1889, being Exhibit No. 92 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 139.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of October 21, 1890, being Exhibit No. 93 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 140.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of October 21, 1891, being Exhibit No. 94 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 141.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of September 28, 1892, being Exhibit No. 95 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 142.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of September 16, 1893, being Exhibit No. 96 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 143.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter transmitting commissioner's report, of May, 1874, being Exhibit No. 132, before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 144.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter transmitting commissioner's report, of November, 1875, being Exhibit No. 133 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 145.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter transmitting commissioner's report, of July, 1876, being Exhibit No. 134 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 146.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter transmitting commissioner's report, of March, 1877, being Exhibit No. 135 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 147.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter transmitting commissioner's report, of January, 1878, being Exhibit No. 136 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 148.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter from the acting secretary of the interior to Chambers, of October 4, 1883, being exhibit No. 137 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 149.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of November 29, 1871, being Exhibit No. 72 before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 150.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of the interior department of December 1, 1871, from the acting secretary of the interior to the commissioner of the general land office, being Exhibit No. 73 before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 151.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of February 3, 1872, from the attorney of the Atlantic & Pacific Railroad Company to the secretary of the interior, being Exhibit No. 74 before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 152.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of February 6, 1872, from the secretary of the interior to the commissioner of the general land office, being Exhibit No. 75 before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 153.

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of March 8, 1872, from the attorney of the Atlantic & Pacific Railroad Company to the secretary of the interior, being Exhibit No. 76 before Ex-

aminer Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 154.

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of March 9, 1872, from the secretary of the interior to the commissioner of the general land office, being Exhibit No. 77 before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 155.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that said letter is a fraudulent alteration and mutilation of the original record on file in the interior department.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter dated April 6, 1872, of the president of the Atlantic & Pacific Railroad Company to the secretary of the interior, being Exhibit No. 78 before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 156.

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of April 8, 1872, from the president of the Atlantic & Pacific Railroad Company to the secretary of the interior, being Exhibit No. 79 before Ex-Examiner Lamme in case No. 184, and ask that it be Defendants' Exhibit No. 157.

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter dated April 10, 1872, of the secretary of the interior to the president of the Atlantic & Pacific Railroad Company, being Exhibit No. 80 before Exominer Lamme in case No. 184, and ask that it be Examiner Lamme in case No. 184, and ask that it be

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of April 11, 1872, from the acting commissioner of the general land office to the secretary of the interior, being Exhibit No. 81 before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 159.

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of August 15, 1872, from the attorney of the Atlantic & Pacific Railroad Company to the secretary of the interior, being Exhibit No. 82 before Examiner Lamme, in case No. 184, and ask that it be marked Defendants' Exhibit No. 160.

MR. REDDING.—Defendants next offer in evidence a circular dated March 8, 1880, offering the bonds of the Southern Pacific Railroad Company for sale, being defendants' exhibit before the Notary Public at New York, No. 1 in case No. 184, and ask that it be marked Defendants' Exhibit No. 161.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant.)

MR. REDDING.—Defendants next offer in evidence circular No. 15, dated January 24, 1867, issued from the general land office showing the rules and regulations regarding railroad selections and locations of lines of route, being Exhibit No. 114 before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 162.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence a circular dated October 15, 1873, issued from the general

land office in modification of instructions of January 24, 1867, with reference to the method to be pursued by land grant railroad companies in locating their lines of proposed route, being Exhibit No. 115 before Examiner Lamme in case No. 184, and ask that it be marked Defendants' Exhibit No. 163.

(Same objection.)

JEROME MADDEN.—(Re-recalled.)

Direct Examination.

MR. REDDING.—Q. As land agent of the Southern Pacific Railroad Company, have you made any selections for patenting of any of the lands in controversy in this case?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. I have.

Q. Will you state what your method of selecting these lands is, and whether you are provided with the forms for so doing by the officers of the interior department?

(Same objection.)

A. I follow the form of selection that is prescribed by the interior department, and all the selections I have made in this case were made in that manner.

Q. Have you had prepared from the records of your department, a statement setting forth accurately the selections in lists under the direction of the secretary of the interior of those lands involved in this case, upon which you have applied for patents?

(Same objection.)

A. I have; on December 8, 1894, I caused to be made a statement showing the lands involved in case 600, United States vs. Southern Pacific Railroad Company and others, that have been selected by the Southern Pacific Railroad Company, and also all the lands patented to it, the surveying and conveying fees paid, et cetera.

Q. Can you produce this statement for introduction in evidence in this case?

(Same objection.)

A. There it is. (Producing.)

MR. REDDING.—Defendants offer in evidence a statement prepared by the land agent of the Southern Pacific Railroad Company showing the lands involved in case No. 600, United States vs. Southern Pacific Railroad Company et al., that have been selected by the company, also showing the lands that have been patented by the government to the company, and the fees paid in connection therewith, and ask that the same may be marked Defendants' Exhibit No. 164; and furthermore ask that the land agent, Mr. Jerome Madden, may have an opportunity of making a copy of this exhibit for use on the files of his office.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that the same is not an authenticated copy of any record authorized by law.)

(Statement prepared by the land agent of the Southern Pacific Railroad Company showing the lands involved in case 600, United States vs. Southern Pacific Railroad Company et al., that have been selected by the company,

and also showing the lands that have been patented by the government to the company, and the fees paid in connection therewith, is marked by the special examiner, "Defendants' Exhibit No. 164, Stephen Potter, Special Examiner," and the same is attached hereto.)

Q. Does this statement correctly set forth the condition of the lands in controversy as they appear upon the books of the land department of the Southern Pacific Railroad Company?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. It does.

Q. Was it made under your supervision and your direction?

(Same objection.)

A. It was.

Q. By clerks in your office?

(Same objection.)

A. By two or three.

Q. State in what manner the registers' and receivers' fees are paid through your department?

(Same objection.)

A. The money is sent to them either by letter or by express.

Q. Is this sent under your personal direction?

(Same objection.)

A. It is.

Q. Do you know of your own knowledge that the sums set forth in this statement as having been paid for the fees of the register and receiver, and for surveying fees, have been paid as they appear in this statement?

(Same objection.)

A. They have.

(It is agreed between counsel that the signature of Jerome Madden to his deposition may be waived.)

MR. REDDING.—Defendants offer in evidence "Defendants' Exhibit A," heretofore attached and made a part of the answer of the defendants in this cause, and ask that the same may be marked Defendants' Exhibit No. 165.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that said exhibit is not an original, nor a copy of any record authorized by law.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter of March 9, 1872, from C. Delano, secretary, to C. J. Hillyer, attorney of the Atlantic & Pacific Railroad Company, being "Exhibit C" attached to the deposition of M. C. Pope, before Hugh M. Sterling, at Washington, in case No. 184, and ask that the same be marked Defendants' Exhibit No. 166.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that said pretended copy is a fraudulent alteration and mutilation of the record of the interior department.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of letter of March 8, 1872, from C. J. Hillyer, attorney of the Atlantic & Pacific Railroad Company to the secretary of the interior, being "Exhibit A" attached to the deposition of M. C. Pope in case No. 184, and ask that it be marked Defendants' Exhibit No. 167.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter dated March 9, 1872, from the secretary of the interior to the commissioner of the general land office, with copy of the endorsement on the envelope containing same on file, being "Exhibit D" attached to the deposition of William J. McGee in case No. 184, and ask that it be marked Defendants' Exhibit No. 168.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence exemplified copy of letter from the commissioner of the general land office to the register and receiver, of April 21, 1871, being Exhibit No. 36 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 169.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant.)

MR. REDDING.—Defendants introduce in evidence exemplified copy of map of the Atlantic & Pacific Railroad through the county of Los Angeles and part of San Bernardino, State of California, showing connection with the public land surveys, being "Defendants' Exhibit before the special examiner, No. 54" in case No. 184, and ask that it be marked Defendants' Exhibit No. 170.

MR. CALL.—I object to the introduction of this pretended map upon the following grounds:

First: Because the map itself is a false and garbled copy of the original map on file in the interior department, omitting from the original map in that department the following endorsement upon said map: "Map of def-

inite location of the Atlantic & Pacific Railroad through the county of Los Angeles and part of San Bernardino, Cal., received at the G. L. O. with secretary's letter of March 9, 1872."

Second: Because the pretended certificate of authentication attached to said map is false and untrue in stating that said map was "Transmitted to this office by departmental letter dated March 9, 1872, and described therein as a map showing the preliminary location, et cetera," whereas, in truth, said map was transmitted as a map of definite location, and was filed and approved as such.

MR. REDDING.—Defendants next offer in evidence trust mortgage of the Southern Pacific Railroad Company of 1875, being Exhibit No. 90 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 171.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant.)

MR. REDDING.—Defendants next offer in evidence trust deed of 1888, being Exhibit No. 91 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 172.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence transportation order of the Southern Pacific Railroad Company, being Exhibit No. 122 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 173.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence transportation order of the Southern Pacific Railroad

Company, being Exhibit No. 121 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No 174.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence tracing of portion of the line of the Atlantic & Pacific Railroad through Soledad canyon, being Exhibit No. 135, filed by defendants in connection with the testimony of John W. Parker in case No. 184, and ask that it be marked Defendants' Exhibit No. 175.

(Same objection.)

MR. REDDING.—Defendants next offer in evidence tracing of Exhibit No. 128 in case No. 68, United States vs. Southern Pacific Railroad Company, United States Circuit Court, Southern District of California, being certified copy of letter of March 9, 1872, from the secretary of the interior to the commissioner of the general land office, and ask that it be marked Defendants' Exhibit No. 176.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant.)

(The further hearing of the matter was then continued until Monday, July 8, 1895, at 10:15 A. M.)

San Francisco, July 8, 1895.

Mr. REDDING.—Defendants offer in evidence exemplified copy of map of the Southern Pacific Railroad branch line from Tehachapi via Los Angeles to the Colorado river, being Exhibit No. 35 before Examiner Potter in case No. 184, and ask that it be marked Defendants' Exhibit No. 177.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and as being a false, fraudulent and garbled copy of the map of the general route of the Southern Pacific Railroad, filed by the Southern Pacific Railroad Company on the date of April 3, 1871, and among other things fraudulently omitting from the face of said map the certificate of Charles Crocker, president of said company, certifying that said map was filed as a map of general route.)

J. L. WILLCUTT.—(Recalled.)

MR. REDDING.—Q. Were you the secretary of the Southern Pacific Railroad Company in 1871?

A. Yes, sir.

Q. Can you produce the official records of that company during that year?

A. I have them here (producing records.)

Q. Have you produced them before the special examiner? A. Yes, sir; these are the records.

Q. Will you please state whether there was a meeting of the stockholders of that corporation or of its directors, on the eleventh of April, 1871?

(Objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. There was a meeting both of stockholders and of the directors on April 11, 1871.

Q. What was the object of the meeting of the stockholders on that date as appears from your official record?

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and not the evidence of any requirement of the law.)

A. The object was to adopt an amended certificate of incorporation, so as to enable the company to accept the grant of March 3, 1871, and to provide means for the construction of the additional railroad.

Q. What resolutions were adopted by the stockholders on that day?

(Same objection.)

A. "Resolved, that the board of directors of this company be, and are, hereby required and directed to prepare and file amended articles and certificate of incorporation as required by law, to enable this company to accept said grant and to construct and operate said additional railroad."

Q. State whether you have an official record of any resolution of the board of directors accepting the terms and conditions of the grant of Congress to the Southern Pacific Railroad Company of March 3, 1871?

(Same objection.)

A. I have.

Q. Will you have made a certified copy of this resolution?

(Same objection.)

A. I will.

MR. REDDING.—Defendants offer in evidence certified copy of a resolution of the board of directors of the Southern Pacific Railroad Company, accepting the terms and conditions of the grant of Congress to that company, of March 3, 1871, and instructing the secretary to send a copy of said resolution, certified under the seal of the

company, to be filed with the secretary of the interior, and ask that it be marked Defendants' Exhibit No. 178.

(Same objection.)

(Certified copy of a resolution of the board of directors of the Southern Pacific Railroad Company accepting the terms and conditions of the grant of Congress to that company of March 3, 1871, and instructing the secretary to send a copy of said resolution, certified under the seal of the company, to be filed with the secretary of the interior, is marked by the special examiner, "Defendants' Exhibit No. 178, Stephen Potter, Special Examiner," and the same is attached hereto.)

MR. REDDING.—Was there a copy of said resolution forwarded to the secretary of the interior under your direction ?

(Same objection.)

A. Yes, sir.

Q. Was its receipt acknowledged by the secretary of the interior.

(Same objection.)

A. Yes, sir.

Q. Does this appear upon the files and records of the Southern Pacific Railroad Company?

(Same objection.)

A. It does.

(No cross-examination.)

J. L. WILLCUTT.

MR. REDDING.—Mr. Call, I have heretofore introduced in evidence patents issued to the Southern Pacific Railroad Company for lands within the granted and in-

demnity limits of that company, under its grant of July 27, 1866, and under its grant of March 3, 1871, which were marked "Defendants' Exhibit No. 89," Defendants' Exhibit No. 90," "Defendants' Exhibit No. 91," and "Defendants' Exhibit No. 92." I did so for the purpose of presenting to the Court the forms of patents issued by the government to the Southern Pacific Railroad Company for lands under its said grants. Mr. Jerome Madden has procured, and is now able to produce before the special examiner, the original patent and duplicate original lists of selections for the lands in controversy, so far as the same have been patented and selected in this action. The patents heretofore introduced, with the exception of one instance, do not include any of the lands in controversy. I therefore desire to withdraw those patents and now introduce the patents and selections aforesaid, which include lands in controversy.

MR. CALL.—No objection to withdrawing the patents heretofore offered, and they may be considered as withdrawn.

JEROME MADDEN.—(Re-re-recalled.)

MR. REDDING.—Q. Have you procured from the records of your office the original patents issued to the Southern Pacific Railroad Company for lands within the granted and indemnity limits, of the grant to the Southern Pacific Railroad Company of July 27, 1866, so far as the lands in controversy herein are concerned?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I have.

Q. Do you now produce them before the special Examiner?

(Same objection.)

A. Here they are (producing.)

MR. REDDING.—Defendants offer in evidence Patent No. 22, Southern Pacific Railroad lands, primary limits, Los Angeles, Independence, San Francisco and Visalia land districts, showing what lands have been patented to the Southern Pacific Railroad Company under the grant of July 27, 1866, which are in controversy in this case, and ask that the same may be marked Defendants' Exhibit No. 179.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that the lands described in said pretended patent were excepted out of the grant to the Southern Pacific Railroad Company, and were previously granted to the Atlantic & Pacific Railroad Company; and upon the further ground that the issues in this case have been previously adjudicated.)

MR. REDDING.—Mr. Call, I would ask whether it will be agreeable to the plaintiff and yourself representing the plaintiff to allow the special examiner to make a copy of this patent, incorporating therein the entire exhibit, but excepting therefrom the lands not involved in this suit?

MR. CALL.—I will consent that the special examiner may make a certified copy of this patent, including the lands involved in this suit, and excluding the lands not involved in this suit, with the same effect as if the orig-

inal patent were now filed in evidence, with the understanding and agreement that the original patent will be produced before the Court at any time when called for by government's counsel.

("Patent No. 22, Southern Pacific Railroad lands, primary limits, Los Angeles, Independence, San Francisco and Visalia Land Districts," is marked by the special examiner "Defendants' Exhibit No. 179, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING.—Defendants next offer in evidence "Patent No. 1, branch line Southern Pacific Railroad Company, in California," showing certain lands therein as being patented to the Southern Pacific Railroad Company, in controversy in this action, under the grant of March 3, 1871, and ask that the same may be marked Defendants' Exhibit No. 180, and with the same stipulation in reference to its being copied.

MR. CALL.—I will make the same objection and the same stipulation.

("Patent No. 1, branch line Southern Pacific Railroad Company in California," is marked by the special examiner "Defendants' Exhibit No. 180, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING.—Defendants next offer in evidence "Patent No. 2, Southern Pacific Railroad Company branch line," showing certain lands therein as being patented to the Southern Pacific Railroad Company, in controversy in this action, under the grant of March 3, 1871,

and ask that the same be marked Defendants' Exhibit No. 181, and with the same stipulation in reference to its being copied.

(Same objection and same stipulation.)

("Patent No. 2, Southern Pacific Railroad Company branch line," is marked by the special examiner "Defendants' Exhibit No. 181, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence "Patent No. 4, branch line Southern Pacific Railroad Company in California," showing certain lands therein, in controversy in this action, as being patented to the Southern Pacific Railroad Company under the grant of March 3, 1871, and ask that the same may be marked Defendants' Exhibit No. 182, and with the same stipulation in reference to its being copied.

(Same objection and same stipulation.)

("Patent No. 4, branch line Southern Pacific Railroad Company in California," is marked by the special examiner "Defendants' Exhibit No. 182, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence "Patent No. 6, branch line Southern Pacific Railroad Company in California," showing certain lands therein, in controversy in this action, as being patented to the Southern Pacific Railroad Company under the grant of March 3, 1871, and ask that the same may be marked Defendants' Exhibit No. 183, and with the same stipulation in reference to its being copied.

(Same objection and same stipulation.)

("Patent No. 6, branch line Southern Pacific Railroad Company in California," is marked by the special examiner, "Defendants' Exhibit No. 183, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence "Patent No. 8, branch line Southern Pacific Railroad Company in California," showing certain lands therein in controversy in this action, as being patented to the Southern Pacific Railroad Company under the grant of March 3, 1871, and ask that the same may be marked "Defendants' Exhibit No. 184," and with the same stipulation in reference to its being copied.

(Same objection and same stipulation.)

("Patent No. 8, branch line Southern Pacific Railroad Company in California," is marked by the special examiner "Defendants' Exhibit No. 184, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence "Patent No. 9, branch line Southern Pacific Railroad Company in California," showing certain lands therein, in controversy in this action, as being patented to the Southern Pacific Railroad Company under the grant of March 3, 1871, and ask that the same may be marked Defendants' Exhibit No. 185, and with the same stipulation in reference to its being copied.

(Same objection and same stipulation.)

("Patent No. 9, branch line Southern Pacific Railroad Company in California," is marked by the special exam-

iner, "Defendants' Exhibit No. 185, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence "Patent No. 10, branch line Southern Pacific Railroad Company in California," showing certain lands therein, in controversy in this action, as being patented to the Southern Pacific Railroad Company under the grant of March 3, 1871, and ask that the same may be marked "Defendants' Exhibit No. 186," and with the same stipulation in reference to its being copied.

(Same objection and same stipulation.)

("Patent No. 10, branch line Southern Pacific Railroad Company in California," is marked by the special examiner "Defendants' Exhibit No. 186, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants offer in evidence exemplified copy of list No. 42 of lands selected by the Southern Pacific Railroad Company, granted limits, main line, within said limits, under its grant of July 27, 1866, together with the certified copy of the approval by the interior department of said list, and ask that the same may be marked "Defendants' Exhibits Nos. 187 and 188."

(Objected to by Mr. Call as incompetent, immaterial, and irrelevant; and upon the further ground that the lands described therein were excepted out of the grant to the Southern Pacific Railroad Company, and were previously granted to the Atlantic & Pacific Railroad Company; and upon the further ground that the issues in this

case have been previously adjudicated; and the further objection that said pretended selection has not been approved by the commissioner of the general land office or secretary of the interior.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 77 of lands selected by the Southern Pacific Railroad Company, granted limits, main line, within said limits, under its grant of July 27, 1866, together with a certified copy of the approval by the interior department of said list, and ask that the same may be marked Defendants' Exhibits Nos. 189 and 190.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 80 of lands selected by the Southern Pacific Railroad Company, granted limits, main line, within said limits under its grant of July 27, 1866, together with a certified copy of the approval by the interior department of said list, and ask that the same may be marked "Defendants' Exhibits Nos. 191 and 192."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 1 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department, approving the same, and ask that they be marked "Defendants' Exhibits Nos. 193 and 194."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 2 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 195 and 196.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 4 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits No. 197 and 198."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 5 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 199 and 200."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 8 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 201 and 202."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 11, of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 203 and 204."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 13 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 205 and 206."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 17 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 207 and 208."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 18 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 209 and 210."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 21 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 211 and 212."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 28 of lands selected by the Southern Pacific Railroad Company in the Los Angeles District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 213 and 214."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 30 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 215 and 216."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 33 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 217 and 218."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 34 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 219 and 220."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 63 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within its granted limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 221 and 222."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 5 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within the indemnity limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 223 and 224."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 6 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within the indemnity limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask they they be marked "Defendants' Exhibits Nos. 225 and 226."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 7 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within the indemnity limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 227 and 228."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 12 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within the indemnity limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 229 and 230."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 19 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within the indemnity limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 231 and 232."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 20 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within the indemnity limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 233 and 234."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 25 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within the indemnity limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 235 and 236."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 26 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within the indemnity limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 237 and 238."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 28 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within the indemnity limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 239 and 240."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of list No. 30 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, within the indemnity limits, under its grant from Congress of March 3, 1871, so far as the lands in controversy are concerned, together with a certified copy of the letter of the interior department approving the same, and ask that they be marked "Defendants' Exhibits Nos. 241 and 242."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the first section of the road of the Southern Pacific Railroad Company, as located and constructed for the distance of 30.26 miles from its initial point at San Jose to Gilroy, which accompanied the report of the railroad commissioners (Defendants' Exhibit No. 7), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 243."

(Objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the second section of the road of the Southern Pacific Railroad Company as located and constructed, for the distance of twenty miles from Gilroy, south to Tres Pinos, which accompanied the report of the railroad commissioners (Defendants' Exhibits Nos. 8 and 9), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 244."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the third section of the road of the Southern Pacific Railroad Company as located and constructed, for the distance of twenty miles from Goshen, in section 19, township 18 south, range 24 east, M. D. M., to the northwest quarter of section 30, township 21 south, range 25 east, which accompanied the report of the railroad

commissioners (Defendants' Exhibit No. 10), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 245."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the fourth section of the road of the Southern Pacific Railroad Company as located and constructed for the distance of twenty miles, to a point in the northwest quarter of section 2, township 25 south, range 25 east, which accompanied the report of the railroad commissioners (Defendants' Exhibit No. 11), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 246."

(Same objection.)

Mr REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the fifth section of the road of the Southern Pacific Railroad Company as located and constructed, for the distance of twenty miles, to the northeast quarter of section 9, township 28 south, range 26 east, which accompanied the report of the railroad commissioners (Defendants' Exhibit No. 12), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 247."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the sixth section of the road of the South-

ern Pacific Railroad Company as located and constructed, for the distance of twenty miles, to a point in the northeast quarter of section 5, township 30 south, range 29 east, which accompanied the report of the railroad commissioners (Defendants' Exhibit No. 13), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 248."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the seventh section of the road of the Southern Pacific Railroad Company, as located and constructed, for the distance of twenty miles, south from the end of the sixth section to a point in the southeast quarter of section 3[illegible], township 30 south, range 31 east, which accompanied the report of the railroad commissioners (Defendants' Exhibit No. 14), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 249."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the eighth section of the road of the Southern Pacific Railroad Company, as located and constructed, for the distance of twenty miles west from Goshen, which accompanied the report of the railroad commissioners (Defendants' Exhibit No. 15), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 250."

(Same objection.)

Mr. REDDING.— Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the ninth section of the road of the Southern Pacific Railroad Company, as located and constructed, for the distance of twenty miles additional and westward from Goshen, which accompanied the report of the railroad commissioners (Defendants' Exhibit No. 16), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 251."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the tenth section of the road of the Southern Pacific Railroad Company, as located and constructed, for the distance of twenty miles, being the twenty miles from the twentieth to the fortieth mile west from Goshen, which accompanied the report of the railroad commissioners (Defendants' Exhibit No. 17), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 252."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the eleventh section of the road of the Southern Pacific Railroad Company, as located and constructed, for the distance of 41.66 miles, from a point in the southeast quarter of section 33, township 30 south, range 31 east, M. D. M., to a point in the northeast quarter of section 17, township 11 north, range 12 west, S. B.

M., the junction with the branch line near Tehachapi Pass, which accompanied the report of the railroad commissioners (Defendants' Exhibit No. 18), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 253."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the twelfth section of the road of the Southern Pacific Railroad Company as located and constructed from the 141.66 mile to the 384.16 mile from Goshen, being from Mojave to Needles, which accompanied the report of the railroad commissioners (Defendants' Exhibit No. 19), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 254."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence exemplified copy of map showing the definite location and construction of the twelfth section of the road of the Southern Pacific Railroad Company, as located and constructed, from Huron to Alcalde, which accompanied the report of the railroad commissioners (Defendants' Exhibit No. 20), and was therewith filed in the interior department, and ask that the same may be marked "Defendants' Exhibit No. 255."

(Same objection.)

(It is agreed that the time for taking testimony for defendants is extended thirty days from July 15, 1895.)

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS et al., Defendants.

No. 600.

Certificate of Special Examiner.

I certify that the foregoing testimony was taken and proceedings had in the above entitled cause, before me, pursuant to the stipulation and order hereunto prefixed, in the city and county of San Francisco, State of California, in the Hobart building, corner of Market and Montgomery streets, commencing on the second day of July, 1895, and continuing thereafter, at the several times set forth, until completed, in my presence, and in the presence of counsel for the respective parties to said cause.

That previous to giving his testimony, each of the witnesses named in said testimony and proceedings was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in said cause;

That said testimony and proceedings were taken down in shorthand writing and transcribed by me, pursuant to said stipulation;

That the testimony of each witness, after being transcribed, referred to and specified therein, excepting such as, by agreement of counsel, were taken from other causes and introduced in this cause by reference thereto.

I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof, I have hereunto set my hand, this twentieth day of July, A. D. 1895.

STEPHEN POTTER,
Special examiner.

[Endorsed]: Filed February 10, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 1.

RESOLUTION.

(Copy of resolution of the board of directors of the Southern Pacific Railroad Company.)

Resolved, that this company will and does hereby accept the terms, conditions and impositions of the act of the Congress of the United States entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific ocean," passed at the first session of the Thirty-ninth Congress, and that a copy of this resolution of acceptance, certified under the seal of this company, and signed by the president and secretary, be forwarded to and filed with the secretary of the interior.

I, J. L. Willcutt, secretary of the Southern Pacific Railroad Company, hereby certify that the foregoing is a true and correct copy of a resolution adopted at a meeting of the board of directors of the Southern Pacific Railroad Company, held at the office of the company, in the city and county of San Francisco, State of California, on the twenty-fourth day of November, 1866, as the same appears on the records of said company.

Witness my hand and the corporate seal of said company, the second day of July, 1895.

J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

[Seal.]

I certify that I *have compared the foregoing document* with the original thereof on the records of the Southern Pacific Railroad Company, in their possession, and find the same to be a full, true, and correct copy of same.

San Francisco, July 16, 1895.

STEPHEN POTTER,
Special examiner.

(Defendants' Exhibit 1.)

[Endorsed]: Defendants' Exhibit No. 1. Stephen Potter, special examiner. Filed February 10, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 4.

CERTIFICATE.

T. C.
J. D. S.

Department of the Interior.
General Land Office.

January 9, 1882.

I, N. C. McFarland, commissioner of the general land office, do hereby certify that this map is a true and correct copy of the map of *prliminary* survey, under the act of Congress of July 27, 1866, of the Southern Pacific Railroad, from San Francisco, to the Colorado river, on the eastern boundary of California, filed in this office January 4, 1867; also thereto attached, a true copy of letter to this office by the secretary of the interior, dated January 3, 1867, and of the inclosure therewith.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of general land office.

[Seal.]

[Endorsed:] Received in land office Southern Pacific Railroad Company January 18, 1882. Jerome Madden, Land Agent.

Letter of the Secretary.

Department of the Interior.

Washington, D. C., January 3, 1867.

Sir:

I send herewith, for your appropriate official action in the premises, a copy of a letter from T. G. Phelps, Esq., president of the Southern Pacific Railroad, dated the twenty-eighth of September last, with the map accompanying the same showing the preliminary survey of said road from San Francisco, California, to the Colorado river, on the eastern boundary of said State.

I am, sir,

Very respectfully,

Your obt. servant,

O. H. BROWNING,

Secretary.

Hon. Jos. S. Wilson,

Commissioner of the general land office.

Defendant's Exhibit No. 2.

LETTER.

(Copy.)

San Francisco, September 28, 1866.

Sir:

Herewith you will please find the plat of the preliminary survey of the Southern Pacific Railroad, which the company request may be filed in your office, and that instructions may be at once sent to the officers of the land districts through which the projected road is to run, withdrawing the lands within the exterior lines from which the company is entitled, under the act of Congress, to se-

lect the lands donated in aid of the construction of the road (as shown by the colored lines on the map), from market.

You will please note the fact that the company has this day filed a duplicate of this map in the land office in San Francisco, and we respectfully request that that office may be immediately directed by telegram (at the expense of the company) to withdraw the lands, as indicated, in that district from market.

Very respectfully,

T. G. PHELPS,
President S. P. R. R.

Hon. Secretary of the Interior,
Washington, D. C.

Defendant's Exhibit No. 3.

MAP.

MAP(S) IS/ARE TOO LARGE TO BE FILMED

Defendant's Exhibit No. 43.

REPORT.

Certificate.

M. C. P. H. M.

United States of America.

Department of the Interior.

Washington, D. C., September 30, 1893.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals and of the endorsement thereon, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

WM. H. SIMS,

Acting secretary of the interior.

Dep.

[Seal.]

Ex. No. 29.

Report.

Los Angeles, California, April 15, 1874.

To Hon. C. Delano, Secretary of the Interior of the United States of America.

Sir:

We, the undersigned, commissioners of the United States, appointed to examine the first (1st) section of fifty (50) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, authorized by the twenty-

third section of the act of Congress, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3, 1871, commencing at a point in the northwest quarter (N. W. ¼) of section three (3), township two (2) north, range fifteen (15) west, San Bernardino base and meridian, running thence in a southeasterly direction to the city of Los Angeles, and thence in an easterly direction, and ending at the termination of the fiftieth (50th) mile therefrom, at a point in the northeast quarter (N. E. ¼) of section twenty-seven (27), township one (1) south, range nine (9) west, San Bernardino base and meridian:

(Note.—The affidavit, February 16, 1874, of C. P. Huntington, president of the Southern Pacific Railroad Company, of the completion of this section of fifty miles of railroad, contains a clerical error, in that it describes incorrectly the exact quarter section of public land in which the points of commencement and termination are situated. The particular sections of land in which these points exist are given herein correctly. The difference in the description was caused by a difficulty in connecting the line of the road with the United States surveys.)

Certify: that we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the Government should accept as first class.

That in this distance, fifty (50) miles, there are:

20,141	ft. of level line.
8,500	ft. of grades, 0 to 5 ft. pr. mile.
20,500	ft. of grades, 5 to 10 ft. pr. mile.
17,103	ft. of grades, 10 to 15 ft. pr. mile.
18,900	ft. of grades, 15 to 20 ft. pr. mile.
11,700	ft. of grades, 20 to 25 ft. pr. mile.
18,690	ft. of grades, 25 to 30 ft. pr. mile.
22,300	ft. of grades, 30 to 35 ft. pr. mile.
13,944.6	ft. of grades, 35 to 40 ft. pr. mile.
15,800	ft. of grades, 40 to 45 ft. pr. mile.
26,100	ft. of grades, 45 to 50 ft. pr. mile.
26,721.4	ft. of grades, 50 to 55 ft. pr. mile.
20,000	ft. of grades, 55 to 60 ft. pr. mile.
4,400	ft. of grades, 60 to 65 ft. pr. mile.
13,800	ft. of grades, 65 to 70 ft. pr. mile.
5,400	ft. of grades, 72.23 ft. pr. mile.
Total.....264,000	ft., or fifty (50) miles.

Maximum grade, 72.23 feet per mile.

That also in this distance of fifty (50) miles there are:

197,470.5	ft. of straight line.
361.4	ft. of curve of 18 minutes.
17,215	ft. of curve of 20 minutes.
8,720	ft. of curve of 30 minutes.
9,680	ft. of curve of 40 minutes.
5,220	ft. of curve of 50 minutes.
10,102	ft. of curve of 1 degree.
1,575	ft. of curve of 1 degree 20 min.
1,744.6	ft. of curve of 1 degree 30 min.
3,872.4	ft. of curve of 2 degrees 00 min.
200	ft. of curve of 3 degrees 00 min.
3,972.5	ft. of curve of 4 degrees 00 min.
400	ft. of curve of 4 degrees 30 min.
1,331.6	ft. of curve of 5 degrees 00 min.
2,131	ft. of curve of 6 degrees 00 min.
264,000	ft., or over fifty (50) miles.

Maximum radius, 955.4 feet.

That all the iron is of American manufacture, and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the rails weigh not less than fifty-six (56) pounds per lineal yard, and the joints are made with fishplates, and that all the rails are fastened with four spikes to each tie; that there are seven (7) sidings, having an aggregate length of twelve thousand six hundred and forty-two feet, connected with the main track at each end with good switches; that there are two turntable tracks, having an aggregate length of five hundred and forty-six feet, connected with the main

track with good switches; that there are two thousand four hundred and fifty ties per mile, of redwood or red cedar timber, in all cases at least six by eight inches by eight feet long. (The cross ties are in the aggregate over eight inches wide, and make a bearing surface equal to at least two thousand six hundred and forty ties per mile.) That the said section is ballasted with sand, gravel and loam, of which the roadbed is composed, no other materials being found within many miles of the line of the railroad. When more suitable material shall be found within a reasonable distance, we have the assurance of the officers that the road will, if necessary, be reballasted.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are seventeen (17) bridges, all built on pile foundations, as follows:

1 bridge	1,001.7	ft. long;	63 spans,	15.9 each.
1 bridge	795	ft. long;	50 spans,	15.9 each.
1 bridge	556.5	ft. long;	35 spans,	15.9 each.
1 bridge	331.8	ft. long;	21 spans,	15.8 each.
2 bridges.....	190.8	ft. long;	12 spans,	15.9 each.
2 bridges.....	95.4	ft. long;	6 spans,	15.9 each.
5 bridges.....	48	ft. long;	3 spans,	16 each.
3 bridges.....	32	ft. long;	2 spans,	16 each.
1 bridge	16	ft. long;	1 span,	16 each.

Total, 17 bridges.

That there are one hundred and sixteen (116) culverts, as follows:

43 culverts, 1x1 ft., box.
5 culverts, 1x1½ ft., open.
1 culvert, 1x1½ ft., box.
2 culverts, 1x2 ft., open.
1 culvert, 1x2 ft., box.
1 culvert, 1x2½ ft., box.
27 culverts, 2x2 ft., box.
16 culverts, 2x3 ft., box.
4 culverts, 3x3 ft., box.
5 culverts, 3x4 ft., box.
3 culverts, 4x4 ft., box.
1 culvert, 4x6 ft., box.
5 culverts, 6x6 ft., box.
1 culvert, 6 ft., open.
1 culvert, 10 ft., open.

Total, 116 culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad. The material used in the construction of the trestle bridges, culverts and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well known on the Pacific Coast, and universally sought after on account of its great durability and resistance to decay.

We have, however, the assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone when and as the same may become neces-

sary, and suitable material can be found within a reasonable distance of the line of road.

No wood or coal houses have been built, and they do not seem to be necessary. A permanent arrangement has, notwithstanding, been made by the Southern Pacific Railroad Company with the Los Angeles & San Pedro Railroad Company for the full use of the fuel houses at Los Angeles, owned by the latter company. They are large enough for all the fuel required at present by both roads. The dryness of the atmosphere, there being but a very light rainfall in winter, with no rain in summer, and the extreme mildness of the climate, render the use of covering for fuel entirely unnecessary. If, however, other fuel houses shall be hereafter be found requisite, the officers promise that they shall be built immediately.

That at San Fernando there is one passenger and freight house combined, seventy-eight by twenty feet, sided with planed lumber and covered with shingles. On each side of the building there are platforms eight feet wide.

That there is one turntable at San Fernando, with two hundred and seventy-three feet of track, connected at one end by a switch with the main track.

That there is at San Fernando one water tank of eighteen thousand gallons capacity, supplied from a well by a Hooker pump.

That there is at San Fernando one thousand and forty-six feet of side track, connected at both ends with good switches to the main track.

That there are at Sepulveda, thirteen miles from San Fernando, ten acres of land for depot purposes. The officers of the road say that whenever business shall require side tracks or buildings they will be constructed.

That there are at Los Angeles one thousand one hundred and twenty-five feet of side track, connected at both ends by good switches with the main track. Also seven thousand five hundred and fifty and four-tenths feet of side track, connecting by good switches the main line with the passenger and freight depots of the San Pedro & Los Angeles Railroad. Also, two hundred and twenty and six-tenths feet of side track, connecting by good switches the main line with an engine house which the Southern Pacific Railroad Company has constructed on a fifty-acre tract provided for large engine and repair shops when they shall become necessary.

That there are sixty-five acres of land for depots and machine shops. A permanent arrangement has been made and perfected whereby the Southern Pacific Railroad Company has the full use of the passenger and freight depots of the San Pedro & Los Angeles Railroad Company. The road owned by this company consists of a main line of twenty miles from Los Angeles to Wilmington, on the Pacific ocean, and a branch line to Anaheim, seven miles of which is constructed. It is run in connection with the section of fifty miles of railroad under examination. These passenger and freight depots are large, well built, and commodious buildings, and are much more than sufficient to give the fullest accommodations for all the travel and commerce of both roads for many years.

The officers promise that if business should increase to such an extent as to require more ample accommodations other buildings will, when needed, be immediately erected on the sixty-five acres before mentioned.

That at San Gabriel there is one passenger and freight house combined, forty by twenty feet, sided with planed lumber and covered with shingles. On each side of the buildings there are platforms eight feet wide.

That at San Gabriel there is a side track eight hundred and twenty-seven feet long, connected at both ends with good switches to the main track.

That there is at Lexington one passenger and freight house combined, twenty-four by sixteen feet, sided with planed lumber and covered with shingles. On each side of the building there are platforms eight feet wide.

That at Lexington there is a side track eight hundred and twenty-seven feet long, connected at both ends with good switches to the main track.

That at Spadra there is one passenger and freight house combined, seventy-eight by twenty feet, sided with planed lumber and covered with shingles. On each side of the building there are platforms eight feet wide.

That at Spadra there is one turntable with two hundred and seventy-three feet of side track.

That at Spadra there are one thousand and forty-six feet of side track, connected at both ends with good switches with the main track.

That at Spadra there is a water tank of eighteen thousand gallons capacity, supplied from a well by a Hooker pump.

That there are no section houses erected, the hotel and farm houses which are found along the line of the road affording ample accommodation for all the workmen employed.

That no locomotive stall, machine, or repair shops have been bulit; permanent arrangements have been made with the Los Angeles & San Pedro Railroad Company for the use of its machine and repair shops, etc. These we deem sufficient for the work of both roads at present. We are informed by the officers of the company that it is the intention, as soon as enough of the railroad shall be built from which to form a division of any considerable length, to construct permanent machine and repair shops in the most substantial and durable manner, and if, in the meanwhile, additional facilities should be required for repairs or otherwise, they will be supplied promptly.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are now used on this portion of its line:

Locomotives.

No.	Diam. of Wheels.	Size of Cylinder.	Name of Makers.
	Ft. In.	Inches.	
1	4..8	17	Central Pacific R. R. Co., Sacramento, Cal.
2	5..2	14	McQueen, Schenectady, N. Y.
3	5..2	12	" " "
4	5..2	12	" " "
5	5..2	9	Vulcan Iron Works, San Francisco.

Cars.

2 passenger cars.
2 passenger and caboose cars.
1 smoking car.
1 baggage and express car.
7 box freight cars.
43 platform cars.
2 dump cars.
12 section cars.

—

Total, 70 cars.

The above locomotives and cars are more than sufficient for present business and requirements, and no more will be needed for some considerable time to come.

The road traverses a section thinly settled by a population that has hardly any commerce, and in consequence business must necessarily be, for a time, very limited and unprofitable. As the road advances it is hoped that immigration will be attracted and the resources and commerce of the country will be developed to such an extent that when, eventually, connection shall be made with the main line from the Eastern States there will be enough of freight and travel to establish at least a paying business.

The directors say that when and as the same shall become necessary, an ample supply of first class rolling stock and other appurtenances will be promptly provided.

That said section of fifty (50) miles of railroad, and the telegraph line connected therewith, or any part thereof, has not been constructed "on the line of any other railroad route, to aid in the construction of which lands have

heretofore (prior to July 27, 1866) been granted by the United States."

That this section of railroad and telegraph line was completed and equipped previous to the third day of March, 1874, and both are first class.

That the telegraph line is constructed as follows: Not less than thirty redwood poles to the mile; size at bottom eight by eight inches; at top, four by five inches; length, twenty-four feet. They are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality and of the most improved style, and are furnished by the best manufacturers.

We respectfully recommend the acceptance by the Government of the section of fifty (50) miles of railroad and telegraph line hereinbefore described.

We also report and certify that the deficiencies in the ballasting of the Southern Pacific Railroad which existed at the time of the several examinations of said road by the United States railroad commission have been supplied, and that the entire line throughout is ballasted in a first class manner and that the roadway is in an excellent condition and repair.

Respectfully submitted,

LEWIS M. FOULKE,

CALVIN BROWN,

EUGENE L. SULLIVAN,

United States railroad commissioners.

State of California,
County of Los Angeles. } ss.

Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, being duly sworn, severally, each for himself, says that he is the United States railroad commissioner, and that the matter and things set forth in the foregoing statement by him subscribed are true and correct.

LEWIS M. FOULKE.
CALVIN BROWN.
EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Ygnacio Sepulvado, a Judge of the District Court of the Seventeenth Judicial District of the State of Californi, in and for the county of Los Angeles, this fifteenth day of April, A. D. 1874, said Court being a Court of record.

YGNACIO SEPULVEDA,
District Judge of the Court aforesaid.

I hereby certify that Ygnacio Sepulveda is the acting Judge of said Court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said Court this fifteenth day of April, A. D. 1874.

ANDREW W. POTTS,
County Clerk in and for said county of Los Angeles, and ex-officio Clerk of the District Court of the Seventeenth Judicial District, in and for said county of Los Angeles.

[Seal.]

Letter of the Secretary.

Department of the Interior.

Washington, D. C., 8th May, 1874.

Sir:

I have the honor to submit herewith, for your action, the report, dated fifteenth ultimo, of Messrs. Foulke, Brown and Sullivan, appointed by you to examine and report upon the Southern Pacific Railroad and telegraph line. They have examined the fifty miles of road, et cetera, commencing at a point in the northwest one-quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, running thence in a southeasterly direction, to the city of Los Angeles, and thence in an easterly direction, ending at the termination of the fiftieth mile therefrom, at a point in the northeast one-quarter, section 27, township 1 south, range 9 west, same base and meridian.

The commissioners in their report represent(with exception of a few defects, which the company promise to remedy hereafter), that this portion of road is completed and equipped as a first class railroad; and that the telegraph line is finished for the same distance, and is first class. I therefore respectfully recommend the acceptance of the same, and the issue to said company of patents for lands due on account of the construction thereof, agreeably to the provisions of the "act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved twenty-seventh July, 1866, and the acts

amendatory thereof, approved twenty-fifth July, 1868, and twenty-eighth June, 1870.

Very respectfully,

Your ob't servant,

B. R. COWEN,
Acting Secretary.

To the President.

[Endorsed]: Department of the interior, eighth May, 1874. B. R. Cowen, acting secretary, submits to the President report of commissioners on first section of fifty miles of Southern Pacific Railroad.

Approval by the President.

Executive Mansion,
May 9, 1874.

The within recommendations are approved.

U. S. GRANT.

[Endorsed]: Defendants' Exhibit before the special examiner, No. 29. Stephen Potter, special examiner. Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 44.

REPORT.

Certificate.

M. C. P. A. M.

United States of America.

Department of the Interior.

Washington, D. C., Sept. 30, 1893.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the

originals and of the endorsement thereon, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

WM. H. SIMS,
Acting Secretary of the Interior.

Dep.

[Seal.]

Ex No. 30.

Report.

Los Angeles, California, October 21, 1875.

To Hon. Zachariah Chandler,
Secretary of the Interior, of the United States of America:

Sir: We, the undersigned commissioners of the United States, appointed to examine the second (2) section of fifty (50) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, authorized by the twenty-third section of the act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road and for other purposes," approved March 3, 1871, commencing at the termination of section number one (1) of said railroad at a point in the northeast one-quarter (N. E. ¼) of section twenty-seven (27), township one (1) south, range nine (9) west, San Bernardino base and meridian, and running thence in a southeasterly direction fifty (50) miles, to a point in the southwest one-quarter (S. W. ¼) of section four (4), township (3) three south, range one (1) west, San Bernardino base and meridian, certify that we have care-

fully examined such secton, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the government should accept as first-class.

That in this distance (50 miles) there are:

16,700	feet of level line.							
4,900	feet of grades		0 to	5	feet per mile.			
30,900	"	"	"	5 to	10	"	"	"
6,600	"	"	"	10 to	15	"	"	"
18,500	feet of grades		15 to	20	feet per mile.			
21,400	"	"	"	20 to	25	"	"	"
10,400	"	"	"	25 to	30	"	"	"
22,100	"	"	"	30 to	35	"	"	"
4,000	"	"	"	35 to	40	"	"	"
3,500	"	"	"	40 to	45	"	"	"
10,400	"	"	"	45 to	50	"	"	"
11,700	feet of grades		50 to	55	feet per mile.			
12,600	"	"	"	55 to	60	"	"	"
13,200	"	"	"	60 to	65	"	"	"
8,000	"	"	"	65 to	70	"	"	"
7,900	"	"	"	70 to	75	"	"	"
17,000	"	"	"	75 to	80	"	"	"
12,800	"	"	"	80 to	85	"	"	"
6,200	"	"	"	85 to	90	"	"	"
13,800	"	"	"	90 to	95	"	"	"
8,500	"	"	"	95 to	100	"	"	"
2,900	"	"	"	100 to	103.78	"	"	"

264,000 feet total, or fifty (50) miles.

Maximum grade, 103.78 feet per mile.

That also in this distance of fifty (50) miles there are:

208,751 6-10	feet	of	straight line.	
6,000	"	"	curve	0° 30′.
12,800	"	"	"	1°
2,655 4-10	"	"	"	1° 30′
14,190	"	"	"	2°
6,090	"	"	"	3°
740	"	"	"	3° 50′.
8,673	"	"	"	4°
2,800	"	"	"	5°
1,300	"	"	"	6°

Total 264,000 feet, or fifty (50) miles.

Minimum radius, 955 37-100 feet.

That all the iron is of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the rails weigh not less than 56 pounds per lineal yard, and the joints are made with fish-plates, and that all the rails are fastened with four spikes to each tie; that there are four sidings having an aggregate length of 5,557 5-10 feet, each of them connected with the main track at both ends with good switch; that there are 2,450 ties per mile, of redwood a length of 331 feet connected with the main track with a good switche; that there are 2,450 ties per mile, of redwood or red cedar timber, in all cases at least 6x8 inches by 8 feet long (the cross-ties are, in the aggregate, over 8 inches wide and make a bearing surface equal to at least 2,640 ties per mile); that the said section is ballasted with sand, gravel, and loam, of which the road bed is composed, no

other material being found within many miles of the line of the railroad.

When more suitable material shall be found within a reasonable distance, we have the assurance of the officers that the road will, if necessary, be reballasted.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are twenty (20) bridges, all built on pile foundations, as follows:

1	bridge,	2,624	feet	long;	164	spans,	16	feet	each.
1	"	160	"	"	10	"	16	"	"
1	"	128	"	"	8	"	16	"	"
1	"	112	"	"	7	"	16	"	"
1	"	64	"	"	4	"	16	"	"
1	"	48	"	"	3	"	16	"	"
2	"	32	"	"	2	"	16	"	"
4	"	16	"	"	1	"	16	"	"
5	"	10	"	"	1	"	10	"	"
3	"	8	"	"	1	"	8	"	"

Total 20 bridges.

That there are 141 culverts as follows:

		inches.
1	culvert,	6x10 open
2	"	9x12 "
3	"	10x12 "
1	"	10x12 open, with penstock
1	"	10x24 "
		feet
10	"	1x1 "
32	"	1x1 box
4	"	1x1½ open
4	"	1x2 "
17	"	1x2 box
2	"	1½x2 open
1	"	2x2 open
49	"	2x2 box
10	"	2x3 "
3	"	3x3 "
1	"	3x4 "

Total 141 culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad. The material used in the construction of the trestle bridges, culverts and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well known on the Pacific Coast, and universally sought after on account of its great durability and resistance to decay. We have, however, the assurances of the managers and directors that

the culverts and bridge abutments will be rebuilt in stone when, and as the same may become necessary and suitable material can be found within a reasonable distance of the line of the road.

No wood or coal houses have been built and they do not seem to be necessary. The dryness of the atmosphere, there being but a very light rainfall in winter, with no rain in summer, and the extreme mildness of the climate render the use of covering for fuel entirely unnecessary. If, however, fuel houses shall hereafter be found requisite, the officers promise that they shall be built immediately.

That at Pomona there are 1,020 feet of side track, connected with the main line at both ends with good switches.

That at Cucamonga there is one platform 8 feet by 24 feet.

That there are two section houses at Cucamonga, one 18 x30 feet, with wing 10x12, and the other 12x16, both sided with lumber, painted, and covered with shingles.

That there are 1,130 feet of side track at Cucamonga, connected with the main track at both ends with good switches.

That there is one water tank of 18,000 gallons capacity at Cucamonga, supplied by gravity from Cucamonga creek.

That at Colton there is one passenger and freight house combined, 32x160 feet, sided with planed lumber, painted and covered with shingles. On each side of the building

there are platforms ten feet wide, and at each end platforms twelve feet wide.

That there is at Colton one turntable with 331 feet of track, connected at one end by switch with the main track.

That there is at Colton one water tank of 18,000 gallons capacity, supplied from a well by a windmill.

That there are two section-houses at Colton, 12x16 feet each, sided with lumber, painted and covered with shingles.

That there is one coal platform at Colton, 20x40 feet.

That there are two side tracks at Colton having an aggregate length of 3,401.5 feet, connected with the main track at both ends with good switches.

The officers inform us that it is the intention of the company to build at Mound City (three miles from Colton station), buildings, platforms, etc., as soon as the necessities of business shall require it.

That at Frinks there is one water tank of 18,000 gallons capacity, supplied from a well by hand power, to be replaced as soon as possible by windmill.

That no locomotive stalls or engine houses, machine or repair shops have been built on this section. Those at Los Angeles, heretofore on April 15, 1874, reported upon, being amply sufficient to meet its present requirements. If others should become necessary the officers inform us they will be built when and as they shall be required.

Beyond Mount City the road passes through a country almost uninhabited. Work on the next section of fifty miles is progressing rapidly. As soon as that section

shall be ready for examination and acceptance we are informed by the directors that all facilities as regards buildings, water tanks, and other erections and structures which may be required for the complete, prompt and thorough working of the road will be supplied when needed.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are used on this part of its railroad:

Locomotives.

No.	Diam. of wheels.	Size of cylinder and length of stroke.	Weight.	Names of makers.
	Inches.		Tons.	
1	56	17 x 24	42	Central Pacific R. R. Co., Sacramento, Cal.
2	62	14 x 22	26	McQueen, Schenectady, New York.
3	62	12 x 22	25	" "
4	62	12 x 22	25	" "
5	62	9 x 18	15	Vulcan Iron Works, San Francisco.
19	51	15 x 22	29	McQueen, Schenectady, New York.
21	60	16 x 24	32	" "
22	60	16 x 24	32	" "
23	60	16 x 24	32	" "

Cars.

5	passenger cars
3	smoking "
1	baggage "
33	box "
107	platform "
14	hand "
1	section "
3	track-laying "
Total 167	cars.

The foregoing locomotives and cars are more than sufficient for present business and requirement, and no more will be needed for some considerable time to come.

The road traverses a section of country thinly settled by a population that has hardly any commerce, and in consequence, business must necessarily be, for a time, very limited and unprofitable. As the road advances it is hoped that immigration will be attracted, and the resources and commerce of the country will be developed to such an extent that when, eventually, connection shall be made with the main line from the Eastern States there will be enough of freight and travel to establish at least a paying business. The directors say that when, and as the same shall become necessary, an ample supply of first-class rolling stock and other appurtenances will be provided.

That said section of fifty miles of railroad and the telegraph line connected therewith, or any part thereof, has not been constructed "on the line of any other railroad

route to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That this section of railroad and telegraph line are both first-class.

That the telegraph line is constructed as follows: Not less than 30 redwood poles to the mile; size at bottom, 8x8 inches; at top, 4x5 inches; length 24 feet; they are set to a depth of four feet in the ground; number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

We respectfully recommend the acceptance by the government of the section of fifty (50) miles of railroad and telegraph line hereinbefore described.

Respectfully submitted,

LEWIS M. FOULKE,
CALVIN BROWN,
EUGENE L. SULLIVAN.
United States Railroad Commissioners.

State of California,
County of Los Angeles.

Louis M. Foulke, Calvin Brown and Eugene L. Sullivan, being duly sworn, severally, each for himself, says that he is United States railroad commissioner, and that the matters and things set forth in the foregoing statement, by him subscribed are true and correct.

LEWIS M. FOULKE.
CALVIN BROWN.
EUGENE L. SULLIVAN.

Subscribed and sworn to before me Ygnacio Sepulveda, Judge of the District Court of the Seventeenth Judicial District of the State of California, in and for the county of Los Angeles, this twenty-first day of October, A. D. 1875, said court being a court of record.

YGNACIO SEPULVEDA,
District Judge of the court aforesaid.

I hereby certify that Ygnacio Sepulveda is the acting judge of said court; that I am well acquainted with his handwriting, and the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court, the twenty-second day of October, A. D. 1875.

A. W. POTTS,
County Clerk and ex-officio Clerk of said District Court.
[Seal]

Letter of the Secretary.

Department of the Interior,

Washington, D. C., eighth Nov., 1875.

Sir: I have the honor to submit herewith for your consideration, and, if deemed proper, for your approval, the report under date of the twenty-first ult., of Messrs. Foulke, Brown and Sullivan, commissioners appointed by you to examine the Southern Pacific Railroad and telegraph line of California. They have examined an additional section of fifty miles of the (branch) road and telegraph line authorized by the twenty-third section of the act of third March, 1871 (known as the Texas Pacific R. W. act), to be constructed by the said Southern Pacific

Railroad Company. This portion of road commences at the termination of section 1 of said branch, at a point in the northeast one-quarter of section 27, township 1 south, range 9 west, San Bernardino base and meridian, and runs thence fifty miles to a point in the southwest one-quarter of section 4, township 3 south, range 1 west, same base and meridian.

The commissioners report this section completed and equipped as a first-class railroad, and the telegraph as also completed and first-class.

I therefore respectfully recommend the acceptance of said second section of fifty miles of branch road and the issuance to the company constructing it of patents for lands due on account of such construction, agreeably to the provisions of law.

Very respectfully,

Z. CHANDLER,

Secretary.

The President.

[Endorsed]: Department of the interior. Eighth Nov., 1875. Z. Chandler, secretary submits to the President report of commissioners on second section of branch line, fifty miles, of Southern Pacific Railroad, of California.

Approval by the President.

Executive Mansion,

Nov. 11, 1875.

The within recommendations are approved.

U. S. GRANT.

[Endorsed]: Defendants' Exhibit before the special examiner. No. 30. Stephen Potter, special examiner. Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 45.

REPORT.

Certificate.

M. C. P. A. M.

United States of America.

Department of the Interior.

Washington, D. C., Oct. 2, 1893.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals and of the endorsement thereon, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

WM. H. SIMS,

Acting Secretary of the Interior.

Dep.

[Seal]

Ex. No. 31.

Report.

Los Angeles, California, June 22, 1876.

To Hon. Zachariah Chandler,

Secretary of the Interior of the United States of America:

Sir: We, the undersigned commissioners of the United States, appointed to examine the third (3) section of fifty (50) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, authorized by the twenty-third (23rd) section of the act of Congress entitled "An act

to incorporate the Texas Pacific Railroad Company, and to aid in the construction of this road, and for other purposes," approved March 3, 1871, commencing at the termination of section No. two (2) of said railroad, at a point in the southwest one-quarter (S. W. ¼) of section four (4), township three (3) south, range one (1) west, San Bernardino base and meridian, and running thence in a southeasterly direction fifty (50) miles to a point in the southwest one-quarter (S. W. ¼) of section twenty-four (24), in township five (5) south, range seven (7) east, San Bernardino base and meridian, certify that we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the government should accept as first-class.

That in this distance (50) miles there are:

10,200	feet	of	level	line.				
8,700	feet	of	grades	0 to	5	feet	per	mile.
11,400	"	"	"	10 to	15	"	"	"
12,400	"	"	"	15 to	20	"	"	"
27,900	"	"	"	20 to	25	"	"	"
10,500	"	"	"	25 to	30	"	"	"
8,000	"	"	"	30 to	35	"	"	"
17,300	"	"	"	35 to	40	"	"	"
13,450	"	"	"	40 to	45	"	"	"
5,700	"	"	"	45 to	50	"	"	"
17,850	"	"	"	50 to	55	"	"	"
18,300	"	"	"	55 to	60	"	"	"
8,500	"	"	"	60 to	65	"	"	"
3,600	"	"	"	65 to	70	"	"	"
8,800	"	"	"	75 to	80	"	"	"
5,100	"	"	"	80 to	85	"	"	"
18,200	"	"	"	85 to	90	"	"	"
9,400	"	"	"	90 to	95	"	"	"
10,700	"	"	"	95 to	100	"	"	"
38,300	"	"	"	100 to	102.96	"	"	"

Total 264,000 feet, or fifty (50) miles.

Maximum grade, 102 96-100 feet.

That also, in this distance of fifty (50) miles, there are:

214,069.3	feet	of	straight	line.		
10,500	"	"	curve	of	0°	30′
24,800	"	"	"	"	1°	
2,000	"	"	"	"	1°	30′
5,450	"	"	"	"	2°	
5,150	"	"	"	"	3°	
2,030.7	"	"	"	"	3°	15′

Total 264,000.0 feet or fifty (50) miles.

That of this distance of fifty (50) miles there are 6 17-100 miles laid with iron rails, and 43.83 miles laid with steel rails; that all the iron and steel is of Amrican manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the iron rails weigh not less than fifty-six (56) pounds per lineal yard, and the steel rails weigh not less than fifty (50) pounds per lineal yard; that all the joints are made with fish plates, and all the rails are fastened with four spikes to each tie; that there are four (4) sidings, having an aggregate length of 4,627 feet, each of them connected with the main track at both ends with good switches, and one siding 957 feet long, connected with the main track at one end with a good switch; that there are three (3) turntable tracks, each 285 feet long, and connected with the main track by means of a good switch; that there are 2,640 ties per mile (or a bearing surface equivalent to that number of ties), of redwood or red cedar timber, 6x8 inches by 8 feet long; that the said section is ballasted with a superior quality of sand and gravel, of which the roadbed is composed, no better material being found within very many miles of the line of the railroad. When more suitable material shall be found within a reasonable distance we have the assurance of the officers that the road will, if necessary, be reballasted.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are forty-four (44) bridges, all built on pile foundation, as follows:

1	bridge	160	feet	long,	10 spans,	16 feet each.
3	bridges	96	feet	long,	6 spans,	16 feet each.
1	bridge	64	feet	long,	4 spans,	16 feet each.
1	bridge	58	feet	long,	3 spans,	16 feet each.
1	bridge	58	feet	long,	1 span,	10 feet each.
8	bridges	48	feet	long,	3 spans,	16 feet each.
7	bridges	32	feet	long,	2 spans,	16 feet each.
13	bridges	16	feet	long,	1 span,	16 feet each.
4	bridges	10	feet	long,	1 span,	10 feet each.
6	bridges	8	feet	long,	1 span,	8 feet each.

Total, 44 bridges.

That there are 92 culverts, as follows:

20	culverts,	1x1,	box.
19	culverts,	1x2,	box.
1	culvert,	1x3,	box.
37	culverts,	2x3,	box.
15	culverts,	2x3,	box.

Total, 92 culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad. The material used in the construction of the trestle bridges, culverts, and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well known on the Pacific Coast, and universally sought after on account of its great durability and resistance to decay. We have, how-

ever, the assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone when and as the same may become necessary, and suitable material can be found within a reasonable distance of the line of the road.

No wood or coal houses have been built, and they do not seem to be necessary. The dryness of the atmosphere, there being but a very light rainfall in winter, with no rain in summer, and the extreme mildness of the climate, render the use of covering for fuel entirely unnecessary. If, however, fuel houses shall hereafter be found requisite, the officers promise that they shall be built immediately.

That there are two (2) coal platforms, viz:

One at White Water, size 14 ft. 7 in. by 30 ft. 3 in.

One at Indian Wells, size 14 ft. 7 in. by 30 ft. 3 in.

That there are five water tanks, each of 18,000 gallons' capacity, as follows, viz:

One at San Gorgonia, supplied from a well by a windmill.

One at Jacinto supplied by gravity from a spring 2 82-100 miles distant.

One at White Water, supplied by gravity from a spring 2 9-10 miles distant.

One at Seven Palms, supplied by gravity from a spring 1 8-10 miles distant.

One at Indian Wells, supplied from a well by a windmill.

That there are twelve (12) section houses for the accommodation of employees, all of them being sided with planed lumber, painted, and covered with shingles, viz:

Two at San Gorgonio, one 15x28 ft., with wing 10x14 ft.
One 12x16 ft., with wing 8x10 ft.
Two at Jacinto.....one 12x16 ft., with wing 8x10 ft.
One 12x16 ft.
Two at White River, one 12x18 ft.
One 12x16 ft., with wing 8x10 ft.
Four at Seven Palms, two 12x16 feet each, with wing 8x10 feet. Two 12x16 feet.
Two at a point 40 miles from the commencement of this 50-mile section — one 12x18 feet; one 12x16 feet, with wing 8x10 feet.

That the sidings and turntable tracks hereinbefore mentioned are situated as follows, viz:

At San Gorgonia, one siding, 1,175 feet, switch at each end.

At San Gorgonia, one turntable, 285 feet of track.

At Jacinto, one siding, 975 feet; switch at one end.

At White Water one siding, 1191 feet; switch at each end.

At Seven Palms, one siding, 1,131 feet, switch at each end.

At Seven Palms, one turntable, 285 feet of track.

At Indian Wells, one siding, 1130 feet with switch at each end.

At Indian Wells one turntable, 285 feet of track.

That at San Gorgonio there are two (2) handcar and storehouses, one 10x12 feet and one 12x16 feet.

That at Indian Wells there is one station building, consisting of a passenger and a freight house combined, 20

feet by 42 feet, sided with planed lumber, painted, and covered with shingles, and having platforms 42 feet long by 10 feet wide on each side.

That no locomotive stalls or engine houses, machine or repair shops have been built on this section, those at Los Angeles, heretofore, on April 15, 1874, reported upon being amply sufficient to meet its present requirements. If others should become necessary the officers inform us they will build when and as they shall be required.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are used on this part of its railroad, viz:

Locomotives.

No.	Diam. of Wheels.	Size of cylinder and Length of Stroke.	Weight.	Names of Makers.
	In.	In.	Tons.	
1	56	17 x 24	32	Central Pacific R. R. Co., Sacramento, California.
2	62	14 x 22	26	McQueen, Schenectady, New York.
3	62	12 x 22	25	" " "
4	62	12 x 22	25	" " "
5	62	9 x 18	15	Vulcan Iron Works, San Francisco.
19	54	15 x 22	29	McQueen, Schenectady, New York.
21	60	16 x 24	32	" " "
22	60	16 x 24	32	" " "
23	60	16 x 24	32	" " "
25	60	16 x 24	32	" " "
29	60	16 x 24	32	" " "

Cars—

10 passenger cars.
3 passenger and baggage cars.
2 baggage and mail cars.
58 box cars.
137 platform cars.
31 handcars.
10 push cars.

Total, 251 cars.

The foregoing locomotives and cars are more than sufficient for present business and requirements, and no more will be needed for some considerable time to come. The road traverses a section of country thinly settled by a population that has hardly any commerce, and in consequence business must necessarily be, for a time, very limited and unprofitable. As the road advances it is hoped that immigration and settlement of the lands will be atracted, and the resources and commerce of the country developed to such an extent that when, eventually, connection shall be made with the main line from the Eastern States there will be enough of freight and travel to establish at least a paying business. The directors say that when and as the same shall become necessary, an ample supply of first-class rolling stock and other appurtenances will be provided.

That this section of railroad and telegraph line are both first-class.

That said section of fifty (50) miles of railroad and the telegraph line connected therewith, or any part thereof,

has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That the telegraph line is constructed as follows:

Not less than 30 redwood poles to the mile; size at bottom 8x8 inches, at top 4x5 inches; length, 24 feet. They are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

We respectfully recommend the acceptance by the government of the section of fifty (50) miles of railroad and telegraph line hereinbefore described.

Respectfully submitted.

LEWIS M. FOULKE,
CALVIN BROWN,
EUGENE L. SULLIVAN,
United States Railroad Commissioners.

State of California, } ss.
County of Los Angeles. }

Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, being duly sworn, severally, each for himself, says that he is United States railroad commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

LEWIS M. FOULKE.
CALVIN BROWN.
EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Ygnacio Sepulveda, judge of the district court of the Seventeenth Judicial District of the State of California, in and for the county of Los Angeles, this twenty-second day of June, A. D. 1876, said court being a court of record.

YGNACIO SEPULVEDA,
District Judge of the Court aforesaid.

I hereby certify that Ygnacio Sepulveda is the acting judge of said court; that I am well acquainted with his handwriting and the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court this twenty-second day of June, A. D. 1876.

A. W. POTTS,
County Clerk and Ex-officio Clerk of the District Court of said District.

[Seal]

Letter of the Secretary.

Department of the Interior.

Washington, D. C., 10th July, 1876.

Sir: I have the honor to submit herewith for your examination, and, if deemed proper, for your approval, the report, under date of the twenty-second ultimo., of Messrs. L. M. Foulke, Calvin Brown and Eugene L. Sullivan, commissioners appointed by you to examine the Southern Pacific Railroad and telegraph line of California. They have examined the third section of fifty miles of the branch road and telegraph line authorized by the twenty-third section of the act of 3d March, 1871 (known as the Texas

Pacific Railway Act), to be constructed by the Southern Pacific Railroad Company. This portion of road begins at the termination of section No. 2 of said railroad at a point in the southwest one-quarter of section 4, township 3 south, range 1 west, San Bernardino base and meridian, and running thence in a southeasterly direction fifty miles to a point in the southwest one-quarter of section 24, township 5 south, range 7 east, same base and meridian.

The commissioners report this section completed and equipped as a first-class railroad, and the telegraph as also completed and first-class. I therefore respectfully recommend the acceptance of said third section of fifty miles of branch road, and the issuance to the company constructing it of patents for lands due on account of such construction, agreeably to the provisions of law.

I am, sir, very respectfully, your obt. servant,

Z. CHANDLER,
Secretary.

The President.

[Endorsed]: Department of the Interior, 10th July, 1876. Z. Chandler, Secretary, submits to the President report of commissioners on third section, 50 miles, branch line of Southern Pacific Railroad of California.

Approval by the President.

Executive Mansion, July 21, 1876. The within recommendations are approved. U. S. GRANT.

[Endorsed]: Defendant's Exhibit before the Special Examiner No. 31. Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 46.

REPORT.

Certificate.

M. C. P. A. M.

United States of America,

Department of the Interior.

Washington, D. C., Oct. 2, 1893.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals and of the endorsement thereon, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

WM. H. SIMS,

Acting Secretary of the Interior.

Dep.

Ex. No. 32.

[Seal]

Report.

San Francisco, California, February 17, 1877.

To Hon. Zachariah Chandler, Secretary of Interior of the United States of America:

Sir: We, the undersigned, commissioners of the United States, appointed to examine the fourth (4th) section of seventy-eight and fifty-nine one-hundredths (78 59-100) miles, of the railroad and telegraph line of the Southern Pacific Railroad Company, authorized by the twenty-third (23d) section of the act of Congress, entitled "An act to in-

corporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3, 1871, commencing at or near San Fernando at the initial point of section number one (1) of said railroad heretofore reported upon, said point being in the northwest one-quarter (N.-W. ¼) of section three (3), township two (2) north, range fifteen (15) west, San Bernardino base and meridian, and running thence northerly along the line of said railroad and ending at the termination of the seventy-eight and fifty-nine one-hundredths mile therefrom, in the northeast one-quarter (N. E. ¼) of section seventeen (17), township eleven (11) north, range twelve (12) west, San Bernardino base and meridian, certify: That we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the government should accept as first-class.

That in this distance (78 59-100 miles) there are:

40,900	feet of level line.			
17,800	feet of grades	0	to 5	feet per mile.
20,300	feet of grades	5	to 10	feet per mile.
2,800	feet of grades	10	to 15	feet per mile.
16,586.8	feet of grades	15	to 20	feet per mile.
9,700	feet of grades	20	to 25	feet per mile.
15,675.9	feet of grades	25	to 30	feet per mile.
21,000	feet of grades	30	to 35	feet per mile.
14,975	feet of grades	35	to 40	feet per mile.
17,200	feet of grades	40	to 45	feet per mile.
17,637	feet of grades	45	to 50	feet per mile.
37,967.9	feet of grades	50	to 55	feet per mile.
24,816.3	feet of grades	55	to 60	feet per mile.
20,082.7	feet of grades	60	to 65	feet per mile.
12,400	feet of grades	65	to 70	feet per mile.
5,302.7	feet of grades	70	to 75	feet per mile.
24,300	feet of grades	75	to 80	feet per mile.
1,880.9	feet of grades	80	to 85	feet per mile.
6,300	feet of grades	85	to 90	feet per mile.
3,544.3	feet of grades	90	to 95	feet per mile.
8,485	feet of grades	95	to 100	feet per mile.
7,991.7	feet of grades	100	to 105	feet per mile.
23,961	feet of grades	105	to 110	feet per mile.
16,974.7	feet of grades	110	to 115	feet per mile.
26,351.8	feet of grades	115	to 116 16-100	ft. p. mile.

Total, 414,933.7 feet or 78 59.100 miles.

Maximum grade, 116 16-100 feet per mile.

That also in this distance (78 59.100 miles) there are:

317,063.3 feet of straight line.
32,543.1 feet of curve 12 min. to 1 deg. inclusive.
13,339.5 feet of curve 1 deg. to 2 min. inclusive.
10,414.2 feet of curve 2 deg. to 3 deg. inclusive.
8,921.8 feet of curve 3 deg. to 4 deg. inclusive.
6,015.4 feet of curve 4 deg. to 5 deg. inclusive.
11,123.3 feet of curve 5 deg. to 6 deg. inclusive.
1,894.3 feet of curve 6 deg. to 7 deg. inclusive.
7,637.4 feet of curve 7 deg. to 8 deg. inclusive.
1,318.3 feet of curve 9 deg. 30 min. inclusive.
4,663.1 feet of curve 10 deg. inclusive.

Total, 414,933.7 feet or 78 59.100 miles.

Minimum radius, 573.7 feet.

That this section of seventy-eight and fifty-nine one-hundredths (78 59-100) miles is laid entirely with steel rails. That all the steel is of American manufacture and of the best quality; and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the rails weigh not less than fifty (50) pounds per lineal yard; that all the joints are made with fish plates, and all the rails are fastened with four spikes to each tie; that there are nine (9) sidings, having an aggregate length of 10, 493 feet, each of them connected with the main track, at both ends, with good switches, and one siding 1,669 feet long connected with the main track at one end with a good switch; that there is one turntable track, 274 feet long, connected with the main track with a good

switch; that there are 2,640 ties per mile (or a bearing surface equivalent to that number of ties) of redwood or red cedar timber, 6 by eight inches by 8 feet long; that the said section is ballasted with a superior quality of sand and gravel, of which the roadbed is composed, no better material being found within very many miles of the line of the railroad.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are fifty-six (56) bridges, all built on pile foundations, as follows:

1 bridge	240 feet long,	15 spans,	16 feet each.
2 bridges	128 feet long,	8 spans,	16 feet each.
2 bridges	112 feet long,	7 spans,	16 feet each.
2 bridges	96 feet long,	6 spans,	16 feet each.
6 bridges	80 feet long,	5 spans,	16 feet each.
9 bridges	64 feet long,	4 spans,	16 feet each.
2 bridges	48 feet long,	3 spans,	16 feet each.
10 bridges	32 feet long,	2 spans,	16 feet each.
22 bridges	16 feet long,	1 span,	16 feet each.

Total, 56 bridges.

That there are one hundred and one (101) culverts, as follows:

20 culverts	1 ft. by	1 ft.,	box of redwood.
1 culvert	1 ft. by	1½ ft.,	box of redwood.
10 culverts	1 ft. by	1 ft.,	box of redwood.
38 culverts	2 ft. by	2 ft.,	box of redwood.
9 culverts	2 ft. by	3 ft.,	box of redwood.
6 culverts	3 ft. by	4 ft.,	box of redwood.
1 culvert	4 ft. by	5 ft.,	box of redwood.
11 culverts	4 ft.		open of redwood.
2 culverts	6 ft.		open of redwood.
3 culverts	8 ft.		open of redwood.

Total, 101 culverts.

No stone suitable for building purposes could be found, generally along the line of the road, in places that were reasonably accessible. It would, in consequence of the rough and mountainous character of part of the country passed through, require a haul by wagon of at least ten miles to get a proper quality of stone to the points on the road where it could have been used, although in some instances a few ledges of rock might be found where the distances in a direct line would be much less.

The timber used in the construction of the bridges, culverts, and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well known on the Pacific Coast and universally sought after on account of its great durability and resistance to decay. We have, however, the assurances of the managers and directors

that the culverts and bridge abutments will be rebuilt in stone when and as the same may become necessary and suitable material can be found within a reasonable distance of the line of the road.

That in this section of seventy-eight and fifty-nine one-hundredths (78 59-100) miles there are three tunnels, having an aggregate length of 7,563 2-10 feet, viz:

Tunnel No. 18, situated 23 miles from the commencement of this section, 264.1 feet in length; all of which is on a 9 deg. 30 min. curve.

Tunnel No. 19, situated 22 6-10 miles from the commencement of this section, 332.6 feet in length; all of which is on a tangent.

Tunnel No. 20 (the San Fernando tunnel), situated five (5) miles from the commencement of this section, 6,966.5 feet in length; all of which is on a tangent.

These tunnels, being excavated through soft rock, required lining. They are well and substantially timbered throughout with best quality of coast redwood or Puget Sound cedar, the arch ribs which support the sheeting being in no case more than five feet apart from center to center, and being much nearer wherever the nature of the ground required it.

These tunnels, inside the timbering, have the following dimensions in the clear, viz:

Height from floor to soffit of arch.....20 ft. 10 in.
Height from floor to springing line of arch....12 ft. 10 in.
Width at floor .....14 ft. 00 in.
Width at springing line of arch.....16 ft. 00 in.

That on the 9 deg. 30 min. curve the two latter dimensions are increasing as follows, viz:

Width at floor.....15 ft. 00 in.
Width at springing line of arch.....17 ft. 00 in.

Suitable portals of timber, strongly framed, have been erected at the ends of each of the tunnels, and proper provisions have been made for full and perfect drainage.

No wood or coal houses have been built, and they do not seem to be necessary. The dryness of the atmosphere—there being but a light rainfall in winter, with no rain in summer—and the extreme mildness of the climate, render the use of covering for fuel entirely unnecessary. If, however, fuel houses shall hereafter be found requisite, the officers promise they shall be built immediately.

That there is one coal platform at Ravena, size 19 feet by 139 feet.

That there are seven water tanks, viz: One at Newhall, of 18,000 gallons' capacity, supplied from a well by a windmill.

One at Lang, of 52,000 gallons' capacity, supplied from Santa Clara creek through a pipe 4,450 feet long.

One at Ravena, of 52,000 gallons' capacity, supplied by gravity from a spring distant about 3,000 feet.

One at Acton, of 5,200 gallons' capacity, supplied from a well by a steam engine.

One at Alpine, of 52,000 gallons' capacity, supplied by gravity from a spring 12,350 feet distant.

One at Lancaster, of 52,000 gallons' capacity, supplied from a well by a steam pump.

One at Sand Creek of 52,000 gallons' capacity, supplied from a well by a windmill.

That there are section houses for the accommodation of employees as follows, viz:

One at San Fernando tunnel, size 16x30 feet, with wing 12x16 feet.

Three at Newhall—one 16x30 feet, with wing 12x16 feet; one 14x22 feet; one 12x14 feet.

Three at Lang—one16x30 feet, with wing 12x16 feet; one 14x22 feet; one 12x14 feet.

Three two miles east of Ravena—one 16x30 feet, with wing 12x16 feet; one 18x20 feet; one 12x14 feet.

Three at Alpine—one 16x30 feet, with wing 12x16 feet; one 14x22 feet; one 12x14 feet.

Three at Lancaster—one 16x30 feet, with wing 12x16 feet; one 14x22 feet; one 12x14 feet.

Three at Sand Creek—one 16x30 feet, with wing 12x16 feet; one 14x22 feet; one 12x14 feet.

That all these houses are sided with rough lumber and covered with shingles, and all of them, except the one at San Fernando tunnel, are painted.

That there are handcar and tool houses along the line of the road as follows, viz:

One at San Fernando tunnel....12x14 feet.
One at Newhall .....12x14 feet.
One at Lang .....12x14 feet.
One at Ravena .....14x20 feet.
One at Alpine .....12x14 feet.
One at Lancaster .....12x14 feet.
One at Sand Creek .....14x20 feet.

All these houses are sided with rough lumber and covered with shingles and all of them are painted, except the one at San Fernando tunnel.

That the sidings and turntable track hereinbefore mentioned are situated as follows, viz:

At San Fernando tunnel, 1 siding, 817 ft., switch at each end.

At San Fernando tunnel, one turntable, 274 ft. of track.

At Andrews, 1 siding, 994½ ft., switch at each end.

At Newhall, 1 siding, 1,167 ft., switch at each end.

At Lang, 1 siding, 1,031½ ft., switch at each end.

At Ravena, 1 siding, 1,121 ft., switch at each end.

At Acton, 1 siding, 1,136 ft., switch at each end.

At Alpine, 1 siding, 1,536 ft., switch at each end.

At Alpine, 1 siding, 1,669 ft., switch at one end.

At Lancaster, 1 siding, 1,400 ft., switch at each end.

At Sand Creek, 1 siding, 1,290 ft., switch at each end.

That for the accommodation of passengers and freight business there are station houses and freight buildings as follows, viz:

At San Fernando tunnel, a passenger and freight house combined, 16 feet by 80 feet, made with rough lumber and covered with shingles, and having platforms 6 feet wide at the front and rear and one of 11 feet wide at one end of the building, and one of 23 feet wide at the other end of it.

At Andrews, a freight house, 18 feet by 30 feet, made with planed lumber, painted, and covered with shingles, and having platforms 10 feet wide at the front and rear and one of 8 feet wide at one end of the building, and one of 22 feet wide at the other end of it.

At Newhall, a station building, consisting of a passenger and freight house combined, 32 feet by 131 feet, made with planed lumber, painted, and covered with shingles, and having platforms 10 feet wide at each side.

At Ravena, a station building, consisting of a passenger and freight house combined, 24 feet by 62 feet, made with planed lumber, painted, and covered with shingles, with platforms 10 feet wide on each side.

That there is at Ravena a sand house 12 feet by 20 feet, made with rough lumber, painted, and covered with shingles.

That there is at San Fernando tunnel an engine house (of one stall), sided with planed lumber, painted, and covered with shingles. This, together with those at Mojave, described below, and at Los Angeles, where the company has built an extensive engine house, and with those at other points on the road, already reported upon, are amply sufficient to meet the present requirements of this section.

That no machine or repair shops have been built on this section. The company has erected at Los Angeles, on section number one of this line, heretofore reported upon, extensive machine and repair shops, which, with those at other points upon the road, also already reported upon, will be amply sufficient to meet all its requirements for some time to come.

Note.—At a point 1,500 feet north of the end of this section of 78 59-100 miles, towit, at "Mojave Station," the company has constructed the following, intended for the use and operation of this section as well as for that of the section immediately north of it, viz:

One station building, consisting of a passenger and freight house combined, 32 feet by 131 1-6 feet, made with rough lumber, painted, and covered with shingles. On three sides of the building there are platforms 10 feet wide. On the fourth side the platform is 50 feet long by 52 feet wide.

Three section houses for accommodation of employees, viz: One 16x30 feet, with wing 12x16 feet; one 14x22 feet, and one 12x14 feet.

Two handcar and tool houses, each 12x14 feet.

One office, 20x40 feet.

One sand house, 24x30 feet.

All these houses are sided with rough lumber, painted, and covered with shingles.

There are also at Mojave:

One engine-house of 15 stalls.

One coal platform, 28x422 feet.

Two water tanks, each of 52,000 gallons' capacity, supplied from a distant spring by gravity.

Five sidings, aggregate length 7,802 feet, switches at each end.

One spur track, 1,223 feet.

One turntable, with 1,014 feet of track.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are used on the entire line of its road, which includes this section of seventy-eight and fifty-nine one-hundredths miles.

Locomotives.

No.	Name.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
		Inches.		Tons.	
1	Huntington.....	54	11 x 15	16	Danforth, Cook & Co.
2	San Francisco.....	60	14 x 22	25	Norris.
3	Pacific	60	14 x 22	25	Norris.
4	Comanche.....	60	14 x 22	26	Danforth, Cooke & Co.
5	San Mateo.....	60	14 x 22	26	Danforth, Cooke & Co.
6	California	60	16 x 24	32	Booth & Co.
7	Atlantic.....	60	16 x 24	32	Booth & Co.
8	Union	48	14 x 18	18	Booth & Co.
9	James Donahue....	66	17 x 22	32	Danforth, Cooke & Co.
10	H. M. Newhall....	54	18 x 24	34	Danforth, Cooke & Co.
11	Menlo Park	66	15 x 24	30	William Mason.
12	Racer.....	60	15 x 24	31	McKay & Aldus.
13	Shoshone.....	60	16 x 22	31	Norris.
14	Red Eagle.....	60	15 x 22	29	Danforth, Cooke & Co.
15	Ranger.....	60	[illegible] x 24	31	McKay & Aldus.
16	Black Deer.....	60	[illegible] 22	31	McKay & Aldus.
17	Orinoco	60	[illegible]4 x 24	28	Norris.
18	Peeler	54	15 x 22	29	McQueen, Schenectady.
19	....	54	15 x 22	29	McQueen, Schenectady.
20	....	60	16 x 24	34½	Baldwin.
21	....	60	16 x 24	32	McQueen, Schenectady
22	....	60	16 x 24	32	McQueen, Schenectady

Locomotives—Continued.

No.	Name.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
		Inches.		Tons.	
23	....	60	16 x 24	32	McQueen, Schenectady.
24	....	60	16 x 24	32	McQueen, Schenectady.
25	....	60	16 x 24	32	McQueen, Schenectady.
26	....	60	17 x 24	32½	McQueen, Schenectady.
27	....	60	17 x 24	32½	McQueen, Schenectady.
28	....	60	17 x 24	32½	McQueen, Schenectady.
29	....	60	16 x 24	32	McQueen, Schenectady.
30	....	56	17 x 24	32	Central Pacific R. R. Co. Sacramento.
31	....	62	14 x 22	26	McQueen, Schenectady.
32	....	62	12 x 22	25	McQueen, Schenectady.
33	....	62	12 x 22	25	McQueen, Schenectady.
34	....	62	9 x 18	15	Vulcan Iron Works, San F. Co.
35	....	54	18 x 24	32½	McQueen, Schenectady.
36	....	54	18 x 24	32½	McQueen, Schenectady.
37	....	54	18 x 24	32½	McQueen, Schenectady.
38	....	54	18 x 24	32½	McQueen, Schenectady.
39	....	54	18 x 24	32½	McQueen, Schenectady.
40	....	54	18 x 24	32½	McQueen, Schenectady.
41	....	54	18 x 24	32½	McQueen, Schenectady.
42	....	54	18 x 24	32½	McQueen, Schenectady.
43	....	54	18 x 24	32½	McQueen, Schenectady.
44	....	54	18 x 24	32½	McQueen, Schenectady.

Cars.

34 passenger cars.
1 parlor car.
4 passenger and baggage cars.
6 smoking cars.
20 emigrant cars.
8 baggage cars.
1 officers' cars.
1 pay car.
1 hunting car.
4 caboose cars.
1 boarding car.
117 box cars.
440 combination cars.
24 stock cars.
328 flat cars.
12 dump cars.
9 stone cars.
54 hand cars.
48 push cars.
2 wood cars.

The above locomotives and cars are amply sufficient to accommodate present commerce and travel, as this section of 78 59-100 miles runs through a country almost unsettled and undeveloped, affording but little, if any, additional business to the road. The directors say that when and as the same shall become necessary an ample supply of first-class rolling stock and other appurtenances will be provided. That this section of railroad and tele-

egraph line was completed and equipped on the fifth day of September, 1876, and that both are first-class.

That said section of seventy-eight and fifty-nine one-hundredths miles of railroad and the telegraph line connected therewith, or any part thereof, has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That the telegraph line is constructed as follows: Not less than 30 redwood poles to the mile. Size at bottom, 8x8 inches; at top, 4x5 inches; length, 24 feet. They are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

We respectfully recommend the acceptance by the government of the section of seventy-eight and fifty-nine one-hundredths (78 59-100) miles of railroad and telegraph line hereinbefore described.

LEWIS M. FOULKE,
CALVIN BROWN,
EUGENE L. SULLIVAN,
United States Railroad Commissioners.

State of California,
City and County of San Francisco. } ss.

Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, being duly sworn, severally, each for himself, says that he is United States railroad commissioner, and that

the matters and things set forth in the foregoing statement by him subscribed are true and correct.

LEWIS M. FOULKE.
CALVIN BROWN.
EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Samuel H. Dwinelle, judge of the district court of the Fifteenth Judicial District of the State of California, in and for the city and county of San Francisco, this seventeenth day of February, A. D. 1877, the same being a court of record.

As witness my hand and the seal of said court the date aforesaid.

SAML. H. DWINELLE,
District Judge of the Court aforesaid.

I hereby certify that Samuel H. Dwinelle is the acting judge of said court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court this seventeenth day of February, A. D. 1877.

THO. H. REYNOLDS,
County Clerk of the City and County of San Francisco, California, and ex-officio Clerk of said District Court of Fifteenth Judicial District.
[Seal]

Letter of the Secretary.

Department of the Interior,
Office of the Secretary.
Washington, D. C., 1st March, 1877.

Sir: I have the honor to submit herewith for your consideration, and, if deemed proper, for your approval, the

report, under date of the seventeenth ultimo, of Messrs. L. M. Foulke, Calvin Brown, and Eugene L. Sullivan, commissioners appointed by you to examine the Southern Pacific Railroad and telegraph line of California. They have examined the fourth section, 78.59 miles of the road, which said company are authorized by the twenty-third section of the act of 3d March, 1871 (16 Stat., 579), to build. Said section begins at a point in the northwest one-quarter of section 3, township 2 north, range 15 west, San Bernardino base and meridian, runs northerly, and ends at a point in the northeast one-quarter, section 17, township 11 north, range 12 west, same base and meridian. They report said section as completed and equipped as a first-class railroad, and the telegraph line, also, as completed and first-class. I therefore respectfully recommend the acceptance of said fourth section, and the issuance to the company constructing it of patents for lands due on account of said construction, agreeably to the provisions of law.

I am, sir, very respectfully, your obt. servant,

CHARLES T. GORHAM

Acting Secretary.

The President.

[Endorsed]: Department of the Interior, 1st March, 1877. Charles T. Gorham, Acting Secretary, submits to the President report of commissioners on fourth section (branch line), 78.59 miles, of Southern Pacific Railroad of California.

Approval by the President.

Executive Mansion, March 2, 1877. The within recommendations are approved. U. S. Grant.

[Endorsed]: Defendants' Exhibit before the Special Examiner No. 32. Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 47.

REPORT.

Certificate.

M. C. P. A. M.

United States of America,

Department of the Interior.

Washington, D. C., Oct. 2, 1893.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals and of the endorsement thereon, on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the interior to be affixed, the day and year first above written.

WM. H. SIMS,

Acting Secretary of the Interior.

Dep.

[Seal]

Ex. No. 33.

Report.

San Francisco, California,

December 6, 1877.

To Hon. Carl Schurz, Secretary of the Interior of the United States of America:

Sir: We, the undersigned, commissioners of the United States, appointed to examine the fifth (5) section of one

hundred and eighteen and thirty-seven one-hundredths (118 37-100) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, authorized by the twenty-third (23) section of the act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3, 1871, commencing at the termination of section number three (3) of said railroad, at a point in the southwest one-quarter (S. W. ¼) of section twenty-four (24), in township five (5) south of range (7) seven east, San Bernardino base and meridian, and running thence in a southeasterly direction along the line of said railroad and ending at the termination of the one hundred and eighteenth and thirty-seven one-hundredth (118.37) mile from commencement at the southern boundary of the State of California, in the center of the Colorado River, at a point which would be, if the United States land surveys were extended into said river, in the southeast one-quarter (S. E. ¼) of section twenty-six (26), in township sixteen (16) south, of range twenty-two (22) east, San Bernardino base and meridian, certify that we have carefully examined such section and that the alignment and grades are as represented on the accompanying maps and profile, and are such as, in view of the capabilities of the ground, the government should accept as first-class:

That in this distance (118.37 miles) there are:

139,448.1 feet of level line.
96,500 feet of grades 0 to 5 feet per mile.
112,800 feet of grades 5 to 10 feet per mile.
115,100 feet of grades 10 to 15 feet per mile.
58,700 feet of grades 15 to 20 feet per mile.
33,100 feet of grades 20 to 25 feet per mile.
22,700 feet of grades 25 to 30 feet per mile.
7,437.2 feet of grades 30 to 35 feet per mile.
7,000 feet of grades 35 to 40 feet per mile.
7,300 feet of grades 40 to 45 feet per mile.
3,086.6 feet of grades 45 to 50 feet per mile.
21,797.3 feet of grade 50 to 52 8-10 feet per mile.

Total, 624,969.2 feet, or one hundred and eighteen .37 miles.

Maximum grade 52 8-10 feet per mile.

That also in this distance (118.37) miles there are—

572,077 feet of straight line.
9,802.5 feet of curve 0° 20′
29,442.9 feet of curve 0° 30′
2,562.2 feet of curve 1° 30′
4,274.9 feet of curve 2°
4,144.0 feet of curve 2° 40′
483.5 feet of curve 3°
1,444.8 feet of curve 4°
737.2 feet of curve 9°

Total, 624,969.2 feet, or one hundred and eighteen .37 miles.

Minimum radius 637.27 feet.

That said section of one hundred and eighteen and thirty-seven one-hundredths (118.37) miles is laid with steel rails; that all the steel is of American manufacture and of the best quality; that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in); that the rails weigh not less than fifty (50) pounds per lineal yard; that all the joints are made with fish plates and all the rails are fastened with four spikes to each tie; that there are nine sidings, having an aggregate length of 13,078 feet, each of them connected with the main track at both ends with good switches, and four (4) sidings, having an aggregate length of seven hundred and ten (710) feet, connected with the main track at one end with a good switch; that there are two (2) turntable tracks, having an aggregate length of eleven hundred and sixty-one (1,161) feet, each connected with the main track by means of a good switch; that there are 2,640 ties per mile (or a bearing surface equivalent to that number of ties) of redwood or red cedar timber 6 by 8 inches by 8 feet long; that the said section is ballasted with a superior quality of sand and gravel of which the roadbed is composed, no better material being found within very many miles of the line of the railroad. When more suitable materials shall be found within a reasonable distance we have the assurance of the officers that the road will, if necessary be reballasted.

That the excavations and the embankments arein strict conformity to the requirements of law and instructions.

That these is one (1) straining beam bridge across the Colorado river, 668 feet in length, consisting of six (6)

fixed spans of 80 feet each resting upon piled foundations, and of one (1) pivot drawbridge having two (2) spans of ninety-three feet seven inches each. The pivot pier is constructed in the most substantial manner and is founded on rock upon the southern bank of the river. Two hundred and fifty-seven feet (257) feet of the north end of this bridge are included in this section of 118.37 miles.

That there are also 123 trestle bridges, all built on pile foundations, as follows:

1 bridge	640 feet long,	40 spans, 16 feet each.
1 bridge	272 feet long,	17 spans 16 feet each.
1 bridge	256 feet long,	16 spans 16 feet each.
3 bridges	208 feet long,	13 spans 16 feet each.
2 bridges	176 feet long,	11 spans 16 feet each.
1 bridge	160 feet long,	10 spans 16 feet each.
1 bridge	112 feet long,	7 spans 16 feet each.
4 bridges,	96 feet long,	6 spans 16 feet each.
10 bridges	80 feet long,	5 spans 16 feet each.
5 bridges	64 feet long,	4 spans 16 feet each.
9 bridges	48 feet long,	3 spans 16 feet each.
36 bridges	32 feet long,	2 spans 16 feet each.
48 bridges	16 feet long,	1 span 16 feet each.
1 bridge	10 feet long,	1 span 10 feet each.

Total, 123 trestle bridges.

There are 329 culverts, as follows:

	ft.		ft.	
7 culverts	1	x	1	box of redwood.
29 culverts	1	x	2	box of redwood.
132 culverts	2	x	2	box of redwood.
135 culverts	2	x	3	box of redwood.
22 culverts	3	x	3	box of redwood.
4 culverts	3	x	4	box of redwood.

Total, 329 culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad. The material used in the construction of the bridges, culverts, and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well known on the Pacific coast and universally sought after on account of its great durability and resistance to decay. We have, however, the assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone when and as the same may become necessary and suitable material can be found within a reasonable distance of the line of the road.

No wood or coal houses have been built and they do not seem to be necessary. The dryness of the atmosphere, there being but a very little rainfall in winter, with no rain in summer, and the extreme mildness of the climate render the use of covering for fuel entirely unnecessary. If, however, fuel houses shall hereafter be found requisite the officers promise that they shall be built immediately.

That no coal platforms have yet been erected on this section of 118.37 miles (one 20 x 150 feet has been built at Yuma 2,800 feet south of the end of this section, the same to be used in the operation of this part of the railroad).

That there are two water tanks, each of 52,000-gallon capacity, as follows, viz:

One at Walters, supplied from a well by a steam pump.

One at Colorado river, supplied from the river by steam pump.

That there are twenty-one (21) section houses for the accommodation of employees, as follows, viz:

Three at Walters: One 14 x 40 feet, with wings 10 x 16 feet sided with planed lumber. One 18 x 20 feet of rough lumber. One 12 x 14 feet of rough lumber.

Three at Dos Palmos: One 14 x 40 feet with wing 10 x 16 feet, sided with planed lumber. One 18 x 20 feet of rough lumber. One 12 x 14 feet of rough lumber.

Three at Volcano: One 14 x 40 feet, with wing 10 x 16 feet, sided with planed lumber. One 18 x 20 feet of rough lumber. One 12 x 14 feet of rough lumber.

Three at 0.76 mile north of Flowing Well: One 14 x 40 feet with wing 10 x 16 feet, sided with planed lumber. One 18 x 20 feet of rough lumber. One 12 x 14 feet of rough lumber.

Three at Mammoth Tank: One 14 x 40 feet with wing 10 x 16 feet, sided with planed lumber. One 18 x 20 feet of rough lumber. One 12 x 14 feet of rough lumber.

Three at 2.58 miles south of Mesquite: One 14 x 40 feet, with wing 10 x 16 feet, sided with planed lumber.

One 18 x 20 feet of rough lumber. One 12 x 14 feet of rough lumber.

Three at 7.25 miles south of Cactus: One 14 x 40 feet with wing 10 x 16 feet, sided with planed lumber. One 18 x 20 feet of rough lumber. One 12 x 14 feet of rough lumber.

All of the above-described section houses are painted and covered with shingles, and each of them is provided with a double roof painted.

That there are seven (7) hand-cars and tool-houses on this section along the line of the road, viz:

One at Walters: Size 14 x 20 feet.

One at Dos Palmos: Size 14 x 20 feet.

One at Volcano: Size 14 x 20 feet.

One 0.76 mile north of Flowing Well: Size 14 x 20 feet.

One at Mammoth Tank: Size 14 x 20 feet.

One at a point 2.58 miles south of Mesquite: Size 14 x 20 feet.

One at a point 7.25 miles south of Cactus: Size 14 x 20 feet.

All of these houses are sided with rough lumber, painted and covered with shingles.

That the siding and turntable tracks, hereinbefore mentioned are situated as follows, viz:

At Walters, one siding, 1,815 feet with good switch at each end.

At Dos Palmos, one siding, 1,171 feet with good switch at each end.

At Frinks Spring, one siding, 1,291 feet with good switch at each end.

At Flowing Well, one siding, 1,652 feet with good switch at each end.

At Fortuga, one siding, 1,500 feet with good switch at each end.

At Mammoth Tank, one siding, 917 feet with good switch at each end.

At Mesquite, one siding, 2,619 feet with good switch at each end.

At Cactus, one siding, 900 feet with good switch at each end.

At Pilot Knob, one siding, 1,213 feet with good switch at each end.

At Dos Palmos, one turntable, and track 331 feet in length.

At Pilot Knob, one turntable, and track 830 feet in length.

No passenger stations or freight buildings have been built on this section of 118.37 miles, and none are required for this railroad passes through the Colorado Desert, which is uninhabitable and without commerce of any kind.

(Note.—At a point 2,800 feet south of the end of this section, towit, at Yuma station in Arizona territory, that there is in course of construction by the Southern Pacific Railroad Company one station building consisting of a passenger and freight house combined 32 feet by 100 feet, to be built of planed lumber, and to be painted and covered with shingles, and to have platforms on each side the whole length of the building, and ten feet wide.

Also that there at said station (Yuma) the following structures, which have been completed.

One freight house, for the accommodation of river freight, 32 feet by 90 feet.

One engine house of seven stalls.

One sand house 18 x 35 feet.

One water tank of 52,000 gallons capacity, supplied from the Colorado river by a steam pump.

One coal platform 20 feet by 150 feet.

That there are also at Yuma:

Five sidings having an aggregate length of 5,562 feet, connected with the main track by good switches at each end.

One spur track 1,100 feet in length, connected to the main track with a good switch.

One turntable, with 750 feet of track, connected with main track by a good switch.

These buildings, water tank, platform, etc., are constructed for and intended to be used in the operation of this section of 118.37 miles as well as for that of the section of railroad immediately south of it in the territory of Arizona.

That no locomotive stalls or engine houses, machine or repair shops have been built on this section, the extensive ones at Los Angeles and at other points on the line heretofore reported upon and those above-mentioned at Yuma, Arizona territory, being amply sufficient to meet its present requirements. If others shall become necessary the officers inform us they will be built when and as they shall be required. The Southern Pacific Railroad Company owns the following locomotives and cars which are used on the entire line of its railroad, which includes this section of 118.37 miles.

Locomotives.

No.	Diameter of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
	Inches.	Inches.	Tons.	
1	54	11 x 15	16	Danforth, Cooke & Co.
2	60	14 x 22	25	Norris.
3	60	14 x 22	25	Norris.
4	60	14 x 22	26	Danforth, Cooke & Co.
5	60	14 x 22	26	Danforth, Cooke & Co.
6	60	16 x 24	32	Booth & Co.
7	60	16 x 24	32	Booth & Co.
8	48	14 x 18	18	Booth & Co.
9	66	17 x 22	32	Danforth, Cooke & Co.
10	54	18 x 24	34	Danforth, Cooke & Co.
11	66	15 x 24	30	William Mason.
12	60	15 x 24	31	McKay & Aldus.
13	60	16 x 22	31	Norris.
14	60	15 x 22	29	Danforth, Cooke & Co.
15	60	15 x 22	31	McKay & Aldus.
16	60	16 x 22	31	McKay & Aldus.
17	60	14 x 24	28	Norris.
18	54	15 x 22	29	McQueen, Schenectady.
19	54	15 x 22	29	McQueen, Schenectady.
20	60	16 x 24	34½	Baldwin.
21	60	16 x 24	32	McQueen, Schenectady.
22	60	16 x 24	32	McQueen, Schenectady.

Locomotives—Continued.

No.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight.	Names of Makers.
	Inches.	Inches.	Tons.	
23	60	16 x 24	32	McQueen, Schenectady.
24	60	16 x 24	32	McQueen, Schenectady.
25	60	16 x 24	32	McQueen, Schenectady.
26	60	17 x 24	32½	McQueen, Schenectady.
27	60	17 x 24	32½	McQueen, Schenectady.
28	60	17 x 24	32½	McQueen, Schenectady.
29	60	17 x 24	32	McQueen, Schenectedy.
30	56	17 x 24	32	Central Pacific R. R. Co., Sacramento.
31	62	14 x 22	26	McQueen, Schenectady.
32	62	12 x 22	25	McQueen, Schenectady.
33	62	12 x 22	25	McQueen, Schenectady.
34	62	9 x 18	15	Vulcan Iron Works, San Francisco.
35	54	18 x 24	32½	McQueen, Schenectady.
36	54	18 x 24	32½	McQueen, Schenectady.
37	54	18 x 24	32½	McQueen, Schenectady.
38	54	18 x 24	32½	McQueen, Schenectady.
39	54	18 x 24	32½	McQueen, Schenectady.
40	54	18 x 24	32½	McQueen, Schenectady.
41	54	18 x 24	32½	McQueen, Schenectady.
42	54	18 x 24	32½	McQueen, Schenectady.
43	54	18 x 24	32½	McQueen, Schenectady.
44	54	18 x 24	32½	McQueen, Schenectady.

Cars.

35 passenger cars.
1 parlor car.
23 emigrant cars.
8 baggage cars.
1 officers' car.
1 pay car.
1 hunting car.
8 caboose cars.
1 boarding car.
117 box cars.
440 combination cars.
24 stock cars.
1 passenger and baggage car.
8 smoking cars.
328 flat cars.
12 dump cars.
8 stone cars.
116 hand cars.
62 push cars.
2 wood cars.
20 water cars.
24 stock cars.

Total, 1,217.

The above locomotives and cars are more than sufficient for present business and requirements, and no more

will be needed for some considerable time to come. The road traverses a section of country thinly settled by a population that has hardly any commerce, and in consequence business must necessarily be for a time very limited and unprofitable. As the road advances it is hoped that immigration and settlement of the lands will be attracted and the resources and commerce of the country developed to such an extent that when, eventually, connection shall be made with the main line from the Eastern States there will be enough of freight and travel to establish at least a paying business. The directors say that when and as the same shall become necessary an ample supply of first class rolling stock and other appurtenances will be provided.

That this section of railroad and telegraph line are both first class.

That said section of one hundred and eighteen and thirty-seven one-hundredths (118.37) miles of railroad and telegraph line connected therewith, or any part thereof, has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866) been granted by the United States."

That the telegraph line is constructed as follows: Not less than 30 redwood poles to the mile; size at bottom, 8 by 8 inches; at top 4 by 5 inches; length 24 feet; they are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

We recommend the acceptance by the government of the section of one hundred and eighteen and thirty-seven one-hundredths miles of railroad and telegraph line hereinbefore described.

Respectfully submitted.

EUGENE L. SULLIVAN,
ANDREW S. BENDER,
ZEBULOW B. STURGUS,
U. S. Railroad Commissioners.

State of California,
City and County of San Francisco. } ss.

Eugene L. Sullivan and Andrew S. Bender being duly sworn, severally each for himself, says, that he is United States railroad commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

EUGENE L. SULLIVAN.
ANDREW S. BENDER.

Subscribed and sworn to before me, E. D. Wheeler, judge of the District Court of the Nineteenth Judicial District of the State of California, in and for the city and county of San Francisco, this sixth day of December, A. D. 1877, said court being a court of record.

E. D. WHEELER,
District Judge of Court aforesaid.

I hereby certify that E. D. Wheeler is the acting judge of said court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court this tenth day of December, A. D. 1877.

THOMAS H. REYNOLDS,

County clerk of the city and county of San Francisco, California, and ex officio clerk of said District Court of the Nineteenth Judicial District.

(Seal)

District of Columbia,
City and County of Washington. } ss.

Zebulow B. Sturgus, being duly sworn, says, that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

ZEBULOW B. STURGUS,

Subscribed and sworn to before me, a notary public, this twenty-sixth day of December, A. D. 1877.

M. P. CALLAN,
Notary Public.

[Seal]

Clerk's Office of the Supreme Court of the District of Columbia.

DISTRICT OF COLUMBIA, ss.

I, R. J. Meigs, clerk of the said court, do hereby certify that M. P. Callan, Esq., whose name is subscribed to the certificate of the proof of acknowledgment of the annexed instrument and thereon written was, at the time of taking such proof or acknowledgment, a notary public in and for the said district, dwelling therein, commissioner,

sworn and duly authorized to take the same. And further that I am well acquainted with the handwriting of said M. P. Callan and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, and the said instrument is executed and acknowledged according to the laws of this district.

In testimony whereof, I have hereunto set my name and affixed the seal of said court this twenty-sixth day of December, A. D. 1877.

R. J. MEIGS,
Clerk.
By R. J. Meigs, Jr.,
Assistant Clerk.

(Seal)

Letter of the Secretary.

Department of the Interior.
Office of the Secretary,
Washington, D. C., 19th January, 1878.

Sir: I have the honor to submit herewith for your consideration the report, under date of the 6th ultimo of Messrs. Eugene L. Sullivan, Andrew S. Bender, and Zebulon B. Sturgus, commissioners appointed by you to examine the Southern Pacific Railroad and Telegraph line of California.

They have examined the fifth section of what is known as the branch line of said road, authorized by the twenty-third section of the Act of 3d March, 1871, incorporating the Texas Pacific Railroad Company (16 Stat., 579). Said section is 118.37 miles in length. It begins at a point in the southwest quarter of section 24, township 5 south,

range 7 east, San Bernardino base and meridian; runs southeastward and ends in the center of the Colorado river at a point which, if the United States surveys were extended into said river, would be in the southeast quarter of section 26, township 16 south, range 22 east, same base and meridian.

The commissioners report said section as completed and equipped as a first-class railroad, and the telegraph line also as complete and first-class.

Said twenty-third section of the Act of 1871 authorizes the Southern Pacific Railroad Company of California to construct its road "to the Texas Pacific Railroad at or near the Colorado river." The Texas Pacific Railroad not having been constructed at or near said river, the point of contact of said roads has not been ascertained, except as to the fact that it is within the Fort Yuma military reservation.

In view of your action last autumn in relation to said Southern Pacific Railroad's crossing said reservation, I have the honor to recommend that said section examined and reported on be accepted from the point of beginning to the point where the road intersects the western boundary of said reservation, which is represented on the map accompanying said report as a point in the southeast quarter of northeast quarter section 27, township 16 south, range 22 east, San Bernardino base and meridian, and that patents for lands due on account of construction,

according to provisions of law, issue to said Southern Pacific Railroad Company of California.

I am, sir, very respectfully, your ob't servant,

C. SCHURZ,
Secretary.

The President.

[Endorsed]: The secretary of the Interior. 19th January, 1878. Submits report of commissioners on the fifth section; 118.37 miles of Southern Pacific Railroad, authorized by act of 3d March, 1871, and recommends that the road examined be accepted from the beginning of said section to the point where it crosses the western boundary of Ft. Yuma military reservation, California.

Approval by the President.

Executive Mansion, January 23, 1878.

The recommendations of the Secretary of the Interior are hereby approved. The section of railroad is accepted between the points designated by him, and lands will be patented to the company accordingly.

R. B. HAYES.

[Endorsed]: Defendants' Exhibit before the special examiner, No. 33. Stephen Potter, Special Examiner. Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

MAP(S) IS/ARE TOO LARGE TO BE FILMED

Defendant's Exhibit No. 98.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 184.

New York, November 1, 1893.

Appearances: Joseph H. Call, Esq., for complainant, Joseph D. Redding, Esq., for defendants; and Patrick A. Nolan, Esq., notary public.

Mr. NOLAN: Pursuant to a notice, of which the following is a copy:

Please take notice that the defendants herein will take the testimony of F. A. Fogg, J. Blickensderfer, Jr., E. N. Robinson, Morris Speyer, C. P. Huntington, I. E. Gates, J. A. Williamson, and others, each and all of whom reside and live more than one hundred (100) miles from the place of trial herein and more than one hundred (100) miles from any place at which the Circuit Court of the United States, for the Ninth Circuit, Southern District of California is appointed to be held by law, at the final hearing for the use on behalf of the defendants before Patrick A. Nolan, a notary public in and for the city and county of New York, State of New York, who is not attorney nor of counsel, nor interested in this case, at the

office of Charles H. Tweed, Esq., 7th floor, Mills Building, New York, in the said city of New York, and State of New York, November 1, 1893, at 11 o'clock A. M., and thereafter, from day to day, as the taking of the depositions may be adjourned, and such testimony will be so taken in accordance with the provisions of sections 863, 864, and 865 of the Revised Statutes of the United States and the equity rules.

Solicitor for defendants,
No. 35 Chronicle Building,
San Francisco, Cal.

Dated at San Francisco, October, 1893.

To George J. Denis, Esq., United States Attorney and Solicitor for the complainant in the above-entitled action, and to Joseph H. Call, Esq., Special United States attorney and solicitor for complainant and of counsel.

Endorsed]: Received a copy of within notice, October 7, 1893, at San Francisco, Cal., but not admitting any right to take testimony of said witnesses as mentioned, nor in manner mentioned.

JOSEPH H. CALL,
Special Assistant United States Attorney, Southern District of California.

There now appear before me on this, the first day of November, A. D. 1893, in the city and county of New York, State of New York, Mr. Joseph H. Call, representing the complainant in the above-entitled action, and Mr. Joseph D. Redding, representing the defendants in the above-entitled action, for the purpose of taking testimony on behalf of the defendants, and in pursuance of the said notice.

Thereupon the following proceedings were taken and had before me, Patrick A. Nolan, notary public in and for the city, county and State of New York.

Mr. REDDING.—Mr. Call, is it agreeable to you that Mr. Nolan shall employ a stenographer who shall reduce the questions and answers to writing, on behalf of the notary, Mr. Nolan, which questions and answers, when so reduced to writing and signed by the witness, will have the same force and effect as if reduced to writing by the notary himself in the presence of the witness; and I would further state that, if satisfactory to you, Mr. Call, and until you make objections to the party chosen, I am agreeable that Mr. C. H. Aron may act as the stenographer for the notary, but if you wish another stenographer I am perfectly agreeable that any one that you deem sufficient, provided he be competent, shall be used by the notary in taking and transcribing the testimony.

Mr. CALL.—Without waiving any objections to the jurisdiction of Mr. Patrick A. Nolan to take testimony in this case, I will state that I have no objection to Mr. Aron taking the testimony as stenographer, with the same effect as if it had been personally reduced to writing by Mr. Nolan, subject to the stipulation that, upon objection being made by counsel for either party, another stenographer may be selected by the parties.

Mr. REDDING.—Mr. Nolan, are you a notary public for the city, and county, and State of New York.

Mr. NOLAN.—Yes, sir.

Mr. REDDING.—By whom appointed?

Mr. NOLAN.—By the governor.

Mr. REDDING.—Mr. Call, will you admit that Mr. Patrick A. Nolan is a duly appointed, and now acting under authority, notary public in and for the city and county of New York, State of New York?

Mr. CALL.—Yes.

Mr. REDDING.—Mr. Call, I desire to give notice that I will take the testimony of Mr. William Salomon, one of the members of the firm of Messrs. Speyer & Company; that I will take his testimony on behalf of the defendants before Mr. Nolan, notary public, in the Mills Building, New York, on Thursday, the second day of November, 1893, at three P. M. I would further state that to-day, being the first of the month and a day of great financial rush and importance in the city of New York, the several witnesses that I have named in my notice, whose testimony we were to commence taking to-day, I find impossible to be present without great embarrassment on their part, and consequently I will ask that the taking of the testimony be adjourned by the notary until to-morrow at three P. M.

Mr. CALL.—I will meet you here at three o'clock to-morrow.

Adjourned, accordingly to to-morrow, Thursday, November 2, 1893, at three o'clock P. M.

New York, November 2, 1893.

Met pursuant to adjournment. Present: Counsel as before.

Adjourned, at the request and on account of the illness of Mr. Call, to-morrow, November 3, 1893, at three o'clock P. M.

Testimony of defendants resumed, November 3, 1893. Present: Mr. Call, representing the complainant; Mr. Redding, representing the defendants, and Mr. P. A. Nolan, notary.

WILLIAM SALOMON, Esq., a witness called on behalf of the defendants, being duly sworn by the notary, in accordance with the provisions of the sections of the Revised Statutes of the United States appertaining thereto, testifies as follows:

By Mr. REDDING.—Q. 1. What is your name, Mr. Salomon? A. William Salomon.

Q. 2. And what is your occupation? A. Banking.

Q. 3. With what firm are you connected?

A. Speyer & Company.

Q. 4. How long have you been connected with the firm of Speyer & Company?

A. About twenty-five years.

Q. 5. Will you state, in general, what the nature of the business is that is transacted by that firm and by yourself in connection with it?

A. It is in large part the purchase of railroad and other loans, with a view to selling those loans—as a rule, under what is called a prospectus, with the name of the firm attached to it.

Q. 6. Do you deal with the general public in the loans and business you have mentioned?

A. We deal with the general public in the countries where we make, either directly or indirectly, the so-called issues, under prospectus, of bonds. We sell our bonds to anybody—whether known to us or unknown to us—who,

on reading our prospectus or hearing of the issues, may choose to buy securities which we offer.

Q. 7. Will you state what countries you transact business in?

A. The partners in the firm of Speyer & Company, excepting two, resident in this city, are partners in a firm in London, England, and in a firm in Frankfort-on-the-Main, Germany. They are also pecuniarily interested in a firm in Amsterdam, Holland, and the issues of bonds bought by Speyer & Company are generally made in one, two, three or four of the cities in question.

Q. 8. Those cities include New York and other portions of the United States?

A. They include New York; they are New York, London, Frankfort, Amsterdam, (Holland). In connection with the issues which are made in those places by our own partners, practically also issues are made in other cities of this country as well as Europe.

Q. 9. As a member of the firm of Speyer & Company, are you familiar with the trust mortgage of the Southern Pacific Railroad Company to D. O. Mills and Lloyd Tevis, trustees, dated April 1, 1875?

Mr. CALL.—Objected to as incompetent, immaterial and irrelevant, and not the best evidence in the matter sought to be adduced. And, Mr. Redding, I will ask you to make the usual stipulation, that where objections are made to any question propounded to any witness during this examination before Mr. Nolan, the stenographer, shall repeat the words "same objection" to all subsequent questions until another objection shall be

made, with the same effect as if such objection were set out in full; and so on from time to time as each objection shall be made, with the same effect as if the objection were set out in full.

Mr. REDDING.—I am perfectly agreeable that the words "same objection," when inserted by the stenographer, shall include the last stated objection by the counsel, and have the same force and effect as if the last stated objection were repeated in full.

Mr. CALL.—Do you desire me to repeat the objection or allow the stenographer to do it as stated.

Mr. REDDING.—I say, without the necessity of having the objection repeated in full, I am willing that the words "same objection" shall be equivalent to a complete reiteration of the objection in detail.

Mr. CALL.—I will state now to the stenographer that wherever I object to any question, I desire to have him repeat the objection by stating "same objection" until otherwise directed, in each instance.

Mr. REDDING.—Very well.

(Question 9 repeated.)

Answer: I am.

Q. 10. Are you a member of the firm of Speyer & Company?

Same objection.

A. Yes, sir.

Q. 11. Did the firm of Speyer & Company negotiate a sale of bonds of the Southern Pacific Railroad Company, under the trust mortgage referred to?

Same objection.

A. The firm of Speyer & Company issued a prospectus in respect to a portion of the bonds issued under the mortgage referred to.

Q. 12. Have you a copy of that prospectus with you?

Same objection.

A. I have not a copy with me here on my person. I have a copy in the office. This is one of the prospectuses of that issue (referring to paper handed to witness by counsel for defendants).

Mr. REDDING.—The defendants offer in evidence prospectus issued by Messrs. Speyer & Company, of New York, in reference to the issue of a certain amount of the six per cent bonds mentioned in the trust mortgage of the Southern Pacific Railroad Company to D. O. Mills and Lloyd Tevis, trustees, dated April 1, 1875, which trust mortgage has heretofore been introduced in evidence in this case, and ask that this exhibit now introduced be marked "Defendants' Exhibit before the notary public in New York, No. 1."

The paper is so marked by the notary.

Same objection.

Q. 13. Will you state whether or not the land grant made by Congress to the Southern Pacific Railroad Company, of March 3, 1871, was one of the securities offered in connection with said bonds and relied upon in said trust mortgage and prospectus as an inducement for the purchase of said bonds?

Same objection.

A. It was.

Q. 14. Would the firm of Speyer & Company have undertaken the negotiation of these bonds without that security?

Same objection.

A. They would not.

Q. 15. I call your attention to that clause in the prospectus which reads as follows:

"The number of acres of land embraced in the United States land grant, and covered by the mortgage is estimated at upwards of 11,000,000 acres, of which it is stated by the company that over 7,000,000 acres appertain to portions of the road already completed. Of these there have been issued to the company patents for more than one million acres, and lists for selected lands are not pending with the United States government for a large amount."

Were those representations relied upon by you and relied upon by the purchasers of these bonds as a portion of the security upon which the bonds were purchased?

Same objection.

A. They were relied upon by us, and, if our prospectus was relied upon at all by the purchasers of the bonds, it was relied upon by the purchasers of the bonds.

Q. 16. Will you state whether or not these bonds, issued under this trust mortgage heretofore referred to, are held in the open market for value received, by innocent purchasers, and in all of the various localities you have mentioned?

Same objection.

A. The bonds in question are held in England, in Holland, in Germany and in the United States, by the

general public, who have bought them upon the prospectus in question, and subsequently; the holding is extremely scattered and it is safe to say has aggregated at times, if not now, approximately $30,000,000.

Q. 17. Are these bonds recognized as a standard security on the market?

Same objection.

A. They are.

Q. 18. And in the various localities you have mentioned?

Same objection.

A. They are.

Q. 19. Will you state whether or not they are dealt with similarly to other bonds issued and negotiated and sold by firms like yourselves?

Same objection.

A. I think I had better say how they are dealt in rather than make a comparison, as there are so many different ways of dealing with bonds under different issues, which I might not know about.

Q. 20. Very well; state it exactly as you wish?

Same objection.

A. The bonds are held more, possibly than usual by serious investors, who hold them for the interest they yield, and, as they may desire to realize the cash or may desire to purchase other securities, they sell them in amounts of anywhere from $1,000 to $100,000, or upwards. They have a market which might be said to be similar to that for United States government bonds, or New York Central bonds or West Shore bonds. They

pass from hand to hand, just as people feel disposed to get their cash for them, or exchange them for other securities.

Cross-examined by Mr. CALL:

XQ. 21. For whom did you act in the sale of these bonds?

A. Your question, I suppose, refers to the firm of Speyer & Company?

XQ. 22. Who is your principal; that is, whom did the firm of Speyer & Company act for in the sale of the bonds?

A. In the main Speyer & Company acted for the firm of Speyer & Company, but the firm of Speyer & Company represented, besides themselves, to some extent—to what extent I cannot recall—other financial firms, commonly called members of the syndicate.

XQ. 23. You probably misunderstood my question. For whom did Speyer & Company sell the bonds?

A. I am trying to explain that fully.

XQ. 24. Very well.

A. Furthermore, in the issues of ten millions of bonds, they were including, beyond the amount owned by Speyer & Company, and the so-called members of the syndicate, an amount of option bonds—when I say option bonds I mean bonds upon which Speyer & Company and the members of the syndicate had an option by reason of a firm purchase thereof—

XQ. 25. They had an option to purchase these bonds, did they?

A. They had, by reason of a firm purchase of the bonds—an outright purchase of the bonds—an option to buy further amounts thereof.

XQ. 26. You then purchased, as a firm, some of the bonds yourselves and you sold them as your own bonds—

A. (Interrupting) The facts are these; I will give you the exact facts, which, as I recall them, are that the firm of Speyer & Company made a purchase of a certain amount of these bonds and formed a syndicate to take those bonds over, retaining for the firm of Speyer & Company an interest in said syndicate. The syndicate holding, including Sepeyer & Company, carries with it an option to buy further amounts thereof, which in all amounted to, as well as I remember, the ten million bonds offered under the prospectus.

XQ. 27. From whom did you obtain the option to purchase the bonds?

A. It would be impossible to answer that question exactly without referring to the contracts made at the time. The contracting party might be one or the other of the corporations with which we have dealt, or individuals. It would be impossible for me to tell that without referring to the contracts; but I can say that the negotiations were carried on with Mr. C. P. Huntington, in one of his official capacities—not with him individually.

XQ. 28. You don't know whether it was with him as a director or officer of the Southern Pacific Railroad Company, or the Pacific Improvement Company?

A. With whom the contract was made I could not tell without reference to the papers drawn at the time, because it is now something like thirteen years ago.

XQ. 29. Who comprised the syndicate which purchased the bonds and sold them?

A. If I desired to give that information it would not be possible to do so, as you can well imagine at this period of time, without reference to books and papers; but I wouldn't give that information unless it was a matter of necessity that I should do so. It discloses the business of Speyer & Company, and while I would not object to naming some parties whom I might remember, unless it was a compulsory matter I should not see fit to disclose, for general public knowledge, my private affairs, or the private affairs of the firm of Speyer & Co., I should say.

Mr. REDDING.—I will state to the witness, on behalf of the defendants, that if the information called for by the government counsel should lead to the necessity of unfolding to the general public the private business of Speyer & Company that does not refer to the general holding of these bonds in the market, I shall advise Mr. Salomon not to answer the question. That of course is a matter which you, Mr. Salomon, can state of your own knowledge whether it be so or not, and upon so stating I would instruct you as the case may be.

The WITNESS.—The information called for does not refer to the general holding of the bonds in the market in any shape or way that I can discover or see. It is simply a matter of an original partnership purchase by

the syndicate, which relieved itself of its holding by selling the bonds, through the prospectus in question, to the general public, but the members of the syndicate in question are not known to the general public.

Mr. CALL.—(To Mr. Redding.) I ask you if you rely upon the purchase by the syndicate mentioned, as being a purchase by persons, in good faith and for value, or otherwise?

Mr. REDDING.—I rely on the testimony of the witness given on the direct examination, showing that these bonds are held by the general public, for value received, in open market, similar to United States bonds, and throughout the various monetary centers of the world.

Mr. CALL.—Do you rely upon the purchase by the syndicate as being such a purchase, because if you do I should want to inquire into the purchase by the syndicate.

Mr. REDDING.—I do not; certainly not.

The WITNESS.—I might cover that. I will say that there is no difference between the purchase by Speyer & Company and the purchase by the syndicate. I was asked a question which I couldn't answer by simply saying the purchase was made by Speyer & Company and tell the truth. The purchase was made by Speyer & Company, but subsequently divided among the syndicate for the purpose of dividing the risk, but the purchase by the general public has absolutely nothing to do with it. To the general public it was an anonymous body. Is that clear.

Mr. REDDING.—That is perfectly clear, and I will state to the counsel for the government that we are try-

ing to show by this witness that these bonds have passed into the possession and holding of the general public for value received.

Mr. CALL.—If the claim is made by the defendants in this action, that the purchase by the syndicate or by Speyer & Company for the syndicate is a purchase in good faith and for value such as claimed, it might be necessary to inquire into the knowledge of the parties and as to who constituted the syndicate. If you waive any such question as that and rely upon the sales by the syndicate, then I will not need to inquire as to who constitute the parties in interest.

Mr. REDDING.—I did not ask the witness anything about the syndicate at all but simply asked about the bonds being sold, for value received, to the general public.

Mr. CALL.—Other than the syndicate?

Mr. REDDING.—Yes.

Cross-examination resumed by Mr. CALL:

XQ. 30. I will ask if Mr. Huntington was one of the syndicate? A. Mr. Huntington was not.

XQ. 31. Was Mr. Charles Crocker one of the syndicate?

A. Mr. Crocker was not one of the syndicate.

XQ. 32. Nor Mr. Mark Hopkins?

A. Nor Mr. Mark Hopkins.

XQ. 33. Was Leland Stanford one of the syndicate?

A. No, sir, he was not. May be I can help you by saying, that to the best of my knowledge, none of the parties interested in the Southern Pacific or any of their companies, was interested in the syndicate.

XQ. 34. So far as you know?

A. This purchase was made by bankers and not in partnership with gentlemen who built the road or connected with its management, to the best of my knowledge.

XQ. 35. Can you name the parties to whom you sold these bonds, or any of them?

A. Not at this date. I can say that the bulk of these bonds, when sold under the prospectus in question, were sold in Europe—were sold in London, in Amsterdam and in Frankfort-on-the-Main. There were hardly any bonds subscribed for in the city of New York or in the city of Boston at that time, except one amount of bonds which was subscribed for, but subsequently rebought, therefore the name of that party wil probably not interest you, although that is the one name that I could give you. If you wish to know it I can tell it, but I don't think it bears upon the matter.

XQ. 36. Do you know whether any of the purchasers of these bonds were, of their own knowledge, acquainted with the terms and conditions off the mortgage or deed of trust of 1875?

A. You mean beyond the information contained in the prospectus in question?

XQ. 37. Yes?

A. That I cannot tell you. My most positive belief is they were not acquainted with any other facts than those set forth in the prospectus in question.

XQ. 38. Do you know whether any of the purchasers were acquainted with the terms and conditions of the act of Congress, approved March 3, 1871?

Mr. REDDING.—Objected to as incompetent, immaterial and not proper cross-examination; as calling for the opinion of the witness upon a matter with which he could not be familiar nor could he be competent to testify to.

Answer. My previous answer would cover that question.

XQ. 39. Do you know, or did you know at the time of the sale of these bonds, when the Southern Pacific Railroad Company, the mortgagor therein named, was incorporated?

Same objection.

A. The date of the incorporation of the Southern Pacific Railroad Company of California? I have every reason to believe that was a fact known to the firm of Speyer & Company, inasmuch as the issue of the bonds and the drawing of the prospectus was only possible after most thorough and careful examination and investigation of all facts pertaining to the question of value, and legal shape—legal position, you might say.

XQ. 40. Did you know that the Southern Pacific Railroad Company, the mortgagor, was incorporated by the consolidation of a number of other railroad companies subsequent to the act of Congress of March 3, 1871?

Mr. REDDING.—Same objection, and the further objection that the government counsel is stating in his question a legal opinion of his own, and I move that that portion of the question be stricken from the record.

A. I can't answer that question in any other language, I think, than the previous answer given.

XQ. 41. That is, that you assume that you did know in regard to it?

Same objection.

A. I must assume that. I can't be expected, about thirteen years later, to be able to recite every fact that was then in my knowledge in connection with a large matter of this kind, or the knowledge of other members of my firm. What you ask me is a physical impossibility.

XQ. 42 I believe you stated that you were familiar with the terms and conditions of the mortgage or deed of trust, dated 1875, to D. O. Mills and Lloyd Tevis. Did you so state? A. As I remember it, I did.

XQ. 43. What lands did you understand were granted to the Southern Pacific Railroad Company, upon which it was sought to make a mortgage?

A. The lands coming under the description in that mortgage.

XQ. 44. The description of the lands in the mortgage?

A. Exactly.

XQ. 45. I will ask you to point out what that description of the lands is which contains the lands in question?

A. I don't know anything about the suit. (Referring to the trust mortgage.) The description begins at the foot of page third of the trust mortgage and covers a portion of page 4.

XQ. 46. Did you know that Congress had made a grant to the Atlantic and Pacific Railroad Company of California.

Same objection.

A. I am unable to answer that question at this date.

XQ. 47. Can you state what investigations were made by any of the proposed purchasers of bonds, or pur-

chasers of bonds, in regard to the title of the Southern Pacific Railroad Company to any particular lands?

Same objection.

A. What do you mean by purchasers of the bonds?

XQ. 48. Persons to whom you sold bonds?

A. What we call the general public.

XQ. 49. Yes.

A. I think I have answered that question under another answer.

XQ. 50. You might just state then what it was.

A. As I remember, the answer was, to the best of my knowledge, these bonds were bought by the general public upon the statements made in the prospectus mentioned. The prospectus mentioned referred to the trust mortgage which, I think the prospectus says, was on file and could be referred to, if desired, but I doubt very much whether any reference was made to it as the prospectus gave a general description of it.

W. SALOMON.

Subscribed and sworn to before me this eighth day of November, 1893.

PATRICK A. NOLAN,

Notary public, Kings county. Certificate filed in New York Co.

[Seal]

Adjourned to Monday, November 6, 1893, at 11 o'clock A. M.

[Endorsed] Opened and filed Dec. 20, 1893. Wm. M. Van Dyke, Clerk.

Issue of $10,000,000 six per cent first mortgage railroad and land gold bonds of the Southern Pacific Railroad Company of California.

In bonds to bearer of $1,000 and $500 each, with provision for Registration of bonds in the name of holder if desired. Issued April 1, 1875; October 1, 1875, and October 1, 1876, and payable thirty years from date.

Interest at six per cent per annum, payable half-yearly on the first of April and first of October, in gold, at New York.

Messrs. Speyer & Co., New York;
Messrs. Brewster, Basset & Co., Boston;
Mr. Laz. Speyer Ellissen, Frankfort-on-Main;
Messrs. Speyer Brothers, London;
Messrs. Tiexeira de Mattos Bros., Amsterdam;
Mr. E. J. Meyer, Berlin;
offer of above bonds for subscriptions.

The subscription list will be opened on Thursday, eleventh of March, and closed on Friday, twelfth of March.

The issue price is ninety-seven and one-half per cent ex. April 1, 1880, coupon, payable as follows:

5 per cent on application.
15 per cent on allotment.
40 per cent on April 15, 1880.
37½ per cent on May 15, 1880.

Allottees may anticipate installments under discount at the rate of 5 per cent per annum.

These bonds are secured by a first mortgage on the railroad and telegraph line, rolling stock, fixtures, land

and franchises of the Southern Pacific Railroad of California, under which $46,000,000 bonds can be issued, of which $29,520,000 (of which the above $10,000,000 are a part) have thus far been issued. The total length of projected road is 1,150 miles, made up as follows: From San Francisco to Soledad, 143 miles; Carnadero to Tres Pinos, 18 miles; Soledad to Poso Junction (Lerdo), 160 miles; Huron to Yuma, 529 miles; Los Angeles to Wilmington, 22 miles; Mohave Junction to Colorado river (estimated), 278 miles; of which 712 miles are completed and in operation, viz: From San Francisco to Soledad, 143 miles; Carnadero to Tres Pinos, 18 miles; Huron to Yuma, 529 miles; Los Angeles to Wilmington, 22 miles.

These 712 miles of railroad are divided into the Northern and Southern Divisions.

The Northern Division runs from San Francisco to Soledad, and from Carnadero to Tres Pinos, in all 161 miles.

The Southern Division extends from Huron to Yuma, with a branch road from Los Angeles to Wilmington, in all 551 miles, and is intersected at Goshen by the San Joaquin branch of the General Pacific Railroad.

The net earnings over operating expenses for these divisions are stated by the company to have been:

	For the Northern Division:	For the Southern Division, through Rental from Central Pacific Railroad Company, lessee:	Total.
1878	$499,344 03	$1,656,360 00	$2,155,704 03
1879	362,761 78	1,635,554 93	1,998,316 71

or more than sufficient to meet the interest on the amount of outstanding bonds.

The company states that the decrease in the earnings of the Northern Division in 1879, was owing in part to temporary causes, which having been recently removed, a return to the former scale of earnings is promised.

The Northern Division is separated from the Southern Division by a gap of about 100 miles by one route, from Tres Pinos to Huron, and by a gap of about 160 miles by another route, from Soledad to Poso Junction. The San Joaquin Valley branch of the Central Pacific Railroad, furnishes the Southern Division with an outlet both to San Francisco and eastwardly over the main line of the Central Pacific Railroad, and, in view of common interests, the Central Pacific Railroad Company has taken a lease of the Southern Division of the Southern Pacific Railroad of California, for a period of not less than five years from January, 1880, and by the terms of the lease 'if a railroad is not completed in five years from that date, so that there is a connection of the Southern Pacific Railroad of California with the eastern system of railroads on what is known as the thirty-second parallel line, the lease shall be extended until such connection is made, provided such extension does not exceed five years longer, or ten years in all," from January, 1880. By the terms of the lease, "the net rental agreed to be paid during the continuance of this lease and any extension thereof, shall be two hundred and fifty dollars a month, or three thousand dollars per year per mile" (being, at present, on about 551 miles, equals about $1,650,000 annual rental), "and if, for any cause, it shall be reduced by mutual consent of the parties that the annual amount of such rental as reduced shall, at

least, be sufficient to pay all the interest that has been or may be agreed to be, paid in one year on any bonds of the party of the first part" (Southern Pacific Railroad Company of California), "herein outstanding during the continuance of the lease."

The number of acres of land embraced in the United States land grant, and covered by the mortgage is estimated at upwards of 11,000,000 acres, of which it is stated by the company that over 7,000,000 acres appertain to portions of the road already completed. Of these there have been issued to the company patents for more than one million acres, and lists for selected lands are now pending with the United States government for a large amount. The net cash avails of the land sales are to be applied to the repurchase or ultimate payment of these bonds; $334,000 are stated by the company to have been redeemed up to December 31, 1879, from the surplus so available.

A sinking fund of $100,000 a year, commencing in 1882, from the earnings of the road is provided as a further security for the loan.

It is contemplated that the Southern Pacific Railroad of California will form part of a through line to El Paso where, meeting with other roads projected to that point, an outlet to the Gulf of Mexico, and to the Atlantic seaboard may be obtained. At its terminus at Yuma it connects with the Southern Pacific Railroad of Arizona, an independenet, but closely affiliated company, which during the past year was built and operated to Casa Grande, a distance of about 182½ miles, and is

since being rapidly pushed to the vicinity of Tucson, about 65 miles further east.

Applications must be made on the annexed form.

The allotment of the loan, which will be made at the discretion of the issuing houses, will be made as early as possible after the subscription is closed. If no allotment is made, the deposit will be returned in full, and if only a portion of the amount applied for be allotted, the balance of the deposit will be applied towards the payment of the amount due on allotment.

In default of payment of the sum due on allotment, or any subsequent installments, the allotments and all payments will be subject to forfeiture.

Upon payment of the deposit on allotment, scrip certificates to bearer will be issued, which will be exchanged for definite bonds as soon as the issue price is paid up.

The mortgage deed, copy of lease and official statements can be inspected, by intending subscribers, at the office of Speyer & Co., 52 Exchange Place, New York, or Messrs. Brewster, Basset & Co., 35 Congress street, Boston.

March eighth, 1880.

[Endorsed]: Defendants' Exhibit before the notary public in New York No. 1. P. A. Nolan, notary public.

Defendant's Exhibit No. 105.

Testimony of JEROME MADDEN.

JEROME MADDEN, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

Mr. REDDING.—Q. Where do you reside?

A. In San Francisco.

Q. What is your occupation?

A. I am the land commissioner or land agent of the Southern Pacific Railroad Company.

Mr. REDDING.—Mr. Call, will you agree that Mr. Madden is the duly appointed land agent, or do you wish that I should procure his appointment?

Mr. CALL.—I wish you to make proof of whatever is essential.

Mr. REDDING.—Q. Have you with you your authority, or the authorization, making you land agent?

A. I have. (Producing.)

Q. Have you also a copy of any resolution of the board of directors of the Southern Pacific Railroad Company?

A. I have. (Producing.)

Mr. REDDING.—The defendants offer the following certified copy of a resolution of the board of directors of the Southern Pacific Railroad Company, appointing Jerome Madden land agent of the company.

(It is stipulated and agreed between counsel that a copy of said paper may be made by the special examiner and inserted in this record, and the original paper here offered in evidence may be returned to the possession of the witness. The certified copy is marked by the special examiner "Defendants' Exhibit before the special examiner No. 1," and the following is a copy of same:

Appointment.

"Secretary's Office.

"Southern Pacific Railroad Company,

"San Francisco, May 10, 1876.

"I, J. L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that at a meeting of the board of directors of said company, held this day, the following resolution was adopted by a unanimous vote:

"Resolved and ordered that Jerome Madden be, and he is, hereby appointed the land agent of this company for the purpose of selling or contracting to sell its lands in the State of California, or in any other State or Territory of the U. S., and to manage, conduct, and carry on the business of its land office. And he is hereby authorized and empowered as such land agent to sign his name for this company to such contracts, agreements, and other documents or papers as may or shall be requisite and necessary for the full, complete, and effectual transaction of all the business aforesaid.

"In witness whereof, I have hereunto set my hand and affixed the corporate seal of the said company.

"J. L. WILLCUTT,

"Secretary S. P. R. R. Co."

[Seal of the Southern Pacific Railroad Company.]

Mr. REDDING.—Q. What is the date of that commission, if you please? A. May 10, 1876.

Q. Have you been land agent of the Southern Pacific Railroad Company from that date down to the present time? A. I have.

Q. And are you still the land agent?

A. I am still the land agent of the Southern Pacific Railroad Company.

Q. Were you in the employ of the Southern Pacific Railroad Company, one of the defendants herein, prior to 1876? A. I was.

Q. In what capacity? A. As deputy land agent.

Q. For how long a period of time were you in that capacity?

A. About one year before that, and before that time, without being regularly deputized, I was an assistant in the office of the Southern Pacific Railroad Company's land department.

Q. Then your employment in the land department of the defendant, the Southern Pacific Railroad Company, commenced at what time?

A. About the summer of 1871.

Q. Have you been constantly and without intermission in the employ of that corporation ever since?

A. I have.

Q. Are you the custodian of the papers, documents, and records of the defendant, the Southern Pacific Railroad Company, in your possession as land agent?

A. I am, that is, all the documents, papers, books, and accounts relating to the lands that were granted to it by the Congress of the United States.

Q. Have you as land agent of the Southern Pacific Railroad Company, and in its employ, been in correspondence with the various departments of the govern-

ment of the United States, particularly the interior department.

Same objection.

A. I have been in correspondence with the interior department and sometimes with the Indian department.

Q. Between what years?

Same objection.

A. From the date of my taking charge of the Southern Pacific land office up to the present time.

Q. Has there ever been any change in the corporate relation of the Southern Pacific Railroad Company as to its identity or its name or its existence from the first date that you have had any connection therewith down to the present time?

Same objection.

A. There never has to my knowledge anywhere, and certainly not in the land department under my charge.

Q. Has any department of the government ever questioned the identity of the Southern Pacific Railroad Company in the correspondence with you, as being different from what it was when you first commenced your dealings officially with them, as land agent down to the present time?

A. It has not.

Same objection.

A recess was then taken by consent of counsel until 2.30 P. M.

San Francisco, Monday, Sept. 11, 1893, 2.30 P. M.

Direct examination of JEROME MADDEN (resumed).

Mr. REDDING.—Q. Has the interior department of the government of the United States in its dealings with the land department of the Southern Pacific Railroad Company, one of the defendants herein, ever called in question the identity of the said Southern Pacific Railroad Company as being different in any wise from that which existed in 1866 to that which is in existence at the time this suit was brought?

Same objection.

A. It had not and it has not up to the present time.

Q. Do you know whether or not the interior department and the government have recognized the Southern Pacific Railroad Company one of the defendants herein as being one and the same corporation as the Southern Pacific Railroad Company of 1866 and of all of the intermediate time?

Same objection.

A. It has never called in question the identity of the Southern Pacific Railroad Company in its dealings with me as land agent; it has always considered it the same as it was in 1866.

Q. Is the same true as to all its dealings with the land department of the Southern Pacific Railroad Company?

Same objection.

A. It is.

San Francisco, Sept. 18, 1893.

Re-direct examination of JEROME MADDEN (resumed).

Mr. REDDING.—In reference to the effect of the order of withdrawal sent by the interior department of the register and receiver of Los Angeles, and covering the lands involved, under date of April 21, 1871, which order of withdrawal has been introduced in evidence in this case, marked, "Defendants' Exhibit before the special examiner, No —," this exhibit being a copy of the certified copy of the original, which certified copy of the original is on file in the clerk's office of this Court in Los Angeles, and will be substituted for the copy introduced herein before this special examiner, and which order of withdrawal refers to the granting act of the Southern Pacific Railroad Company of March 3, 1871, and which order of withdrawal also refers to the map of designation of route filed by the Southern Pacific Railroad Company in the office of the commissioner of the general land office on April 3, 1871—the defendants herewith refer to certain decisions of the secretaries of the interior, construing the effect of said withdrawal, and herewith refer to the official reporting of said decisions and the opinions of the secretaries of the interior in reference to the above matters, and ask leave to introduce in evidence, if the Court so desires, full copies of said decisions, or in lieu thereof, that an order of Court may be obtained declaring that said decisions are before the Court by virtue of the official publication thereof; and which decisions are as follows, towit, namely:

The opinion of Secretary Schurz of May 8, 1879, in the case of Cox vs. Southern Pacific Railroad Company, which is found in 6 Copp, page 35.

Mr. CALL.—I object to the statements of counsel that the order of withdrawal referred to has been introduced in evidence, that it has the effect, or is the kind of an order which he names it, and I shall object to the introduction in evidence of the copies referred to as incompetent, immaterial, irrelevant, and as not the best evidence.

Mr. REDDING.—Next, bearing upon the same point, a decision of Secretary Schurz, dated June 8, 1880, in the case of Gower vs. The Southern Pacific Railroad Company, found in 7 Copp, page 104.

Same objection.

Mr. REDDING.—Next, bearing upon the same subject, the decision of Secretary Teller, dated February 5, 1883, in the case of Eberle vs. The Southern Pacific Railroad Company, found in 10 Copp, page 13.

Same objection.

Mr. REDDING.—Next, bearing upon the same point, the decision of Secretary Teller, dated May 31, 1884, in the case of Hiller vs. The Southern Pacific Railroad Company, found in 11 Copp, page 118.

Same objection.

Mr. REDDING.—Next, bearing upon the same subject the decision of Secretary Teller, dated January 21, 1884, in the case of Southern Pacific Railroad Company vs. Sturm, found in 2 L. D., page 546.

Same objection.

Mr. REDDING.—Next, bearing upon the same subject, the decision of Acting Secretary Joslyn, dated August

22, 1884, in the case of the Southern Pacific Railroad Company vs. The State of California, found in 3 L. D., 88.

Same objection.

Mr. REDDING.—Next, bearing upon the same subject, the decision of Secretary Lamar, dated April 22, 1885, in the case of The Southern Pacific Railroad Company vs. Bryant, found in 3 L. D., page 501.

Same objection.

Mr. REDDING.—Next, bearing upon the same subject, the decision of Secretary Lamar, dated January 30, 1886, in the case of Sansom vs. The Southern Pacific Railroad Company, found in 4 L. D., page 357.

Same objection.

Mr. REDDING.—Next, bearing upon the same subject, the decision of Acting Secretary Muldrow, dated March 13, 1886, in the case of The Southern Pacific Railroad Company vs. The State of California, found in 4 L. D., page 437.

Same objection.

Mr. REDDING.—Next, bearing upon the same subject, the decision of Secretary Noble, dated June 23, 1891, in the case of Duncansen vs. The Southern Pacific Railroad Company, found in 12 L. D., page 664.

Same objection.

San Francisco, Oct. 3, 1893.

Testimony of G. L. LANSING.

G. L. LANSNG, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

Mr. REDDING.—Q. What is your present occupation?

A. I am secretary and controller of the Southern Pacific Company.

Q. As such controller, do you have any—official relations with the accounts of the Southern Pacific Railroad Company and its dealings with the government of the United States?

A. Yes, sir, the Southern Pacific Company is the lessee of the Southern Pacific Railroad Company's property.

Q. What are your official duties with respect to the Southern Pacific Company and the Southern Pacific Railroad Company, acting in the capacity you have named?

A. I have control of the settlement of accounts in connection with the operation of the Southern Pacific Railroad, and in connection with the transportation by the Southern Pacific Railroad for the United States government of mails, troops, military supplies, and so forth, and I have charge of all matters affecting the operations of the Southern Pacific Railroad lines so far as the accounting is concerned and the settlement of the accounts.

Q. Are you in communication officially with the government of the United States in connection with these matters? A. Yes, sir.

Q. The Southern Pacific Railroad Company branch line, as it is known, has a grant to it under the act of Congress of March 3, 1871; the terms of this grant provide for the railroad to be constructed, and when constructed to

be maintained as a first-class road, and to be at all times subject to the use of the United States for a military and postal road, and for the transportation of the effects of the government and munitions of war, etc.; will you state whether or not there is the relation established between the government of the United States and the Southern Pacific Railroad Company under this act of Congress by which this road between a point at or near Tehachapa by way of Los Angeles to Fort Yuma has been and is now being used for the purposes that I have enumerated?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the act of Congress of March 3, 1871, by the terms and conditions of said act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company to which the grant was made by the act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein marked "Master's Exhibits 1, 2, and 3, and Defendants' Exhib-

its before the special examiner, Nos. 88 and 89," has surrendered to the United States all interest in these lands and did thereby surrender to the United States in each case of consolidation all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the interior department and of the United States land office at Los Angeles and the United States land office at San Francisco, and the records of the office of the secretary of state for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.)

A. Yes, sir, the relations which at present exist and are recognized between The Southern Pacific Railroad Company, its lessee, The Southern Pacific Company, and the officials of the United States government, so far as my business relations with them are concerned, are those that have been and are provided for by the act of Congress referred to in the question.

Q. Do you know of your own knowledge whether or not the government of the United States is using the line of railroad of the Southern Pacific Railroad Company, one of the defendants in this action, from a point at or near Tehachapa Pass by the way of Los Angeles to a point on the Colorado river near Yuma, for the purpose of transporting its postal business and troops, munitions of war, stores, and other government effects?

Mr. CALL.—Mr. Redding, does our understanding still continue in regard to inserting the words "same objection" to stand in lieu of the objection previously made?

Mr. REDDING.—I understand that it does.

Mr. CALL.—Insert "same objection" to each question.

(Same objection.)

A. Yes, sir, it is.

Mr. REDDING.—Will you state how this information and knowledge comes to be known by you officially?

(Same objection.)

A. In my official position it is my business to settle the accounts between the United States and the Southern Pacific Railroad Company for transportation of mails, troops, military supplies, etc., for the government over the line of railroad named, and by that means I know personally of the transportation being performed and the terms of its settlement on the part of the government.

Q. Will you please produce the last official report of these transactions issued by the postmaster's department of the government, and state therefrom under what rules and regulations of the postal department the Southern Pacific Railroad Company, one of the defendants in this action, is now proceeding with reference to government transportation?

(Same objection.)

A. The volume that I have before me is the postal laws and regulations of the United States of America, published in Washington at the government printing office in 1893; this volume gives the regulations relating to the transportation of mails, and the laws upon which

they are based; sections 716, 717, 718 and 719 in this volume, pages 293 and 294, state the method of fixing the rate for the transportation of mail as provided by law. covering all the railroads in the United States, and finally referring to land grant roads; relating to land grant roads, section 719 recites that "railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct, shall receive only eighty per centum of the compensation authorized by this act: act of July 12, 1876."

Q. Is the law that you have just quoted the one that is being applied by the postal department of the United States to the transactions of the Southern Pacific Railroad Company between the points named in reference to governmental transportation?

(Same objection.)

A. Yes, sir, it is.

Mr. REDDING.—Defendants ask leave to refer to the postal laws and regulations of 1893, printed at the government printing office, and entitled as follows: "Postal laws and regulations of the United States of America. compiled, revised and published in accordance with the act of Congress, approved March 3, 1891, Washington. government printing office, 1893," and so much thereof as may refer to land grant railroads, and in particular to the Southern Pacific Railroad Company, one of the defendants in this action; and ask that the same may be considered in evidence; and the defendants hereby offer

in evidence this volume, and ask that it be marked "Defendants' Exhibit before the special examiner No. 97," or in lieu of its being offered in evidence that it may be so considered by this Court as an official document in the record.

(Same objection.)

Mr. CALL.—I have no objections to its being considered in evidence by reference, without the necessity of burdening the record by having it actually filed as an exhibit.

Mr. REDDING.—That being satisfactory, we will so consider it.

Mr. CALL.—Yes, sir, subject to the objections made.

Mr. REDDING.—And I understand that on your part to all intents and purposes it is in evidence?

Mr. CALL.—Yes, sir.

Mr. REDDING.—Without objection as to the incompetency of the volume, as an official document?

Mr. CALL.—It is in evidence with the same effect as if it had actually been filed and marked as an exhibit in the case.

Mr. REDDING.—Q. Please show how this is so.

(Same objection.)

A. The report of the postmaster general of the United States for 1890, pages 450 and 451, contains a table showing the readjustment of the rates of pay for mail on railroad routes in States and Territories in which the contract term expired June 30, 1890; on page 450 among the routes enumerated is route 176,014, Goshen, California, to Yuma, Arizona, particular title of the company carrying the mail is the Southern Pacific Company, the length

of the road is 490 55-100 miles, the average weight of mails carried over entire route per day is 4,737 pounds, the pay per mile per annum for transportation $133.38 for 4,737 pounds, average weight of mail carried over entire route per day; by referring to the postal laws and regulations above quoted it will be seen that the compensation as fixed by those laws requires the ascertainment of the average weight of mails carried over the entire route per diem; applying the laws upon the average weight here shown, 4,737 pounds, the calculation will show that the rate which the postmaster general reports as being paid, namely, $133.38 per mile per annum is eighty per centum of the rate allowed by section 719 of the postal laws and regulations above referred to; this showing that the post-office department in fixing the rate for the contract term commencing with July 1, 1890, recognized the operation of the land grant act of the Southern Pacific Railroad, in allowing but eighty per cent of the usual compensation for the service.

Q. That refers to what years?

(Same objection.)

A. The laws of the postoffice department affecting the transportation of mails requires they shall be based upon weighings made for thirty consecutive days, at least once in four years; they allow the term generally to run for four years, but it may be changed by order of the postmaster general before the end of that term; the rate here fixed went into effect July 1, 1890, and is still in effect.

Q. Do you know whether or not the Southern Pacific Railroad Company, by its lessee, the Southern Pacific

Company, is transporting the mails of the government between the points named, namely, from Tehachapa Pass by the way of Los Angeles to Fort Yuma upon the basis stated by you, and in accordance with the rates fixed, as stated by you, from the official records?

(Same objection.)

A. Yes, sir, it is.

Q. Prior to the last adjustment of rates, which, as you state, dates from 1890, what was the rate fixed, and under what rates was the Southern Pacific Railroad Company doing this business?

(Same objection.)

A. The compensation fixed under the law by the postmaster general on the same route, namely, from Goshen to Yuma, covering the contract period of four years ending June 30, 1890, was $123.80 per mile per annum; the payment for this period was made to the Southern Pacific Railroad Company, as appears by the report of the postmaster general for 1890, at page 365.

Q. Why was it made to the Southern Pacific Railroad Company in that instance, and why was it made to the Southern Pacific Company in the instance cited by you before?

(Same objection.)

A. The reason, I suppose to be, that the lease of the Southern Pacific Railroad to the Southern Pacific Company was made in 1885; the readjustment of pay on which this rate was based by the postmaster general was made July 1, 1886; at that time there was a question as to the proper relations of the Southern Pacific Railroad Com-

pany to the Central Pacific Railroad Company, which was the former lessee of the Southern Pacific Railroad; this led to some disputes between the accounting officers of the treasury department of the government, and to avoid any mistake being made as to the proper payee they used the name of the lessor company, namely the Southern Pacific Railroad Company, and made settlements with that company direct.

Q. From what period of time were the rates last stated by you applied to the governmental transportation of the Southern Pacific Railroad Company, between the points named?

(Same objection.)

A. I think that was answered in the previous answer; I said for four years ending June 30, 1890.

Q. That would carry it back, then, to June 30, 1886?

(Same objection.)

A. Yes, sir.

Q. Do you know as a fact that the government of the United States used this portion of the road of the Southern Pacific Railroad Company, namely, between Tehachapa and Fort Yuma by the way of Los Angeles for the transportation of government troops, munitions of war, postal service and other effects during that time?

(Same objection.)

A. Yes, sir, I do.

Q. What were the rates prior to 1886 allowed by the government to the Southern Pacific Railroad Company, or its lessees, for similar use and over the same portion of the road, for mails, munitions of war, and all governmental purposes?

(Same objection.)

A. The rates for the transportation of mails can be shown by the annual reports during the period published by the postmaster general; the rates for the transportation of the army, military supplies, etc., were those which were provided by the tariffs of the railroad company from time to time, covering the particular property transported or the persons.

Mr. REDDING.—We offer in the same manner the report of the postmaster general for the year ending June 30, 1890, and particularly the pages cited by the witness. This volume is entitled in the public print as follows: "Annual report of the postmaster general of the United States for the fiscal year ending June 30, 1890, Washington government printing office, 1890," with the understanding that it shall be considered in evidence to all intents and purposes, without its being filed.

Mr. CALL.—That is satisfactory; and subject to the same objections.

Mr. REDDING.—Q. Have you the postmaster general's report for the four years preceding 1886?

(Same objection.)

A. I have the report here for the year 1886 (producing); the report of the postmaster general for 1886, page 312, shows the rate on the route from Goshen, California, to Yuma, Arizona, over the Southern Pacific Railroad, 490 33-100 miles, at $110.13 per mile, per annum; this covers the period of four years ending on June 30, 1886; a note on the table opposite the item reads as follows: "Land grant"; that note is used in those cases where the

reduction is made in fixing the compensation allowing but eighty per cent of the usual rates for roads having land grants.

Q. Do you know as a fact whether that was the rate received by the Southern Pacific Railroad Company for the transportation of the postal service between the points named during that period of time from the government?

(Same objection.)

A. It was during that time either received from the government or credited in account with the Central Pacific Railroad Company, lessee of the Southern Pacific Railroad at that time.

Mr. REDDING.—Defendants offer in evidence, in the same manner as the last exhibit was offered, report of the postmaster general for 1886, which has the official title as follows: "Annual report of postmaster general of the United States for the fiscal year ending June 30, 1886, Washington government printing office, 1886"; and we particularly refer to the pages cited by the witness; and I ask that this be admitted in evidence in the same manner as the last exhibits, without the necessity of this volume being filed as an exhibit at this time.

Mr. CALL.—That is understood, subject to the same objections.

Mr. REDDING.—Q. Prior to 1882, what rates were allowed to the Southern Pacific Railroad Company for postal service between the points named?

(Same objection.)

A. The report of the postmaster general for 1882 on page 172 shows readjustment of rates in effect July 1,

1881, on route 46,014 from Goshen to Yuma 490 33-100 miles at the rate of $110.13 per mile per annum.

Q. And prior to that what rates were charged?

(Same objection.)

A. The rates prior to that are shown on same page of same report to have been $75.24 per mile per annum, and this rate was also in effect on June 30, 1879, as shown by the report of the postmaster general for the year 1879, at page 99; in the report of the postmaster general for the year 1878, page 151, a table is given showing the readjustment of the rates of pay on contracts which expired June 30, 1878; on page 150 appears, route 40,014 Huron to Yuma, a distance of 530 29-100 miles, rate of pay per mile per annum $79.20; a note on this page recites that 54½ miles apply from November 1, 1875, from May 5, 1877, between Colton and Yuma, the residue of the route from July 1, 1877; the report of the postmaster general for 1877 on page 57, shows that the compensation paid on June 30, 1877, being the rate at that time in effect on route 46,014 from Goshen to Caliente, a distance of 95 71-100 miles, being at the annual rate per mile per annum of $54; a note states that pay on 54 40-100 miles is estimated; this is the commencement of compensation on the line as constructed southerly from Goshen.

Q. Have you now stated the rates as regulated by the government of the United States with reference to the Southern Pacific Railroad Company between the points named, namely, Tehachapa and Fort Yuma by the way of Los Angeles, from the commencement of the construction of the road down to the present time?

(Same objection.)

A. Yes, sir.

Mr. REDDING.—The defendants offer in evidence in the same manner as heretofore, that is to say, by reference, the report of the postmaster general for 1877, and we particularly refer to the pages cited by the witness, which report is officially declared to be as follows:"Annual report of the postmaster general of the United States for the fiscal year ending June 30, 1877, Washington, government printing office, 1877."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence, in the same manner, the report of the postmaster general for 1878, which is officially published to be as follows: "Annual report of the postmaster general of the United States for the fiscal year ending June 30, 1878, Washington, government printing office, 1870"; with particular reference to the pages cited by witness.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence, in the same manner, the report of the postmaster general for 1879, officially published to be as follows: "The annual report of the postmaster general of the United States for the fiscal year ending June 30, 1879, Washington, government printing office, 1879," with particular reference to the pages cited by witness.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the report of the postmaster general for 1880, in the same manner, officially published to be as follows: "Annual report of the postmaster general of the United States for

the fiscal year ending June 30, 1880, Washington, government printing office, 1880," with particular reference to the pages cited by witness.

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence report of the postmaster general for 1882, in the same manner, officially published as "Annual report of the postmaster general of the United States for the fiscal year ending June 30, 1882, Washington, government printing office, 1882, with particular reference to the pages cited by the witness; and I ask, Mr. Call, that each one of these may be considered as introduced in evidence by reference, without the necessity of the introduction of them in the records of the case by exhibit mark.

Mr. CALL.—I have no objection to their being offered by reference, to the same effect as if they were filed, saving my objections to the evidence heretofore made.

Mr. REDDING—Q. You have stated that in some instances these rates were allowed direct to the Southern Pacific Railroad Company, and in other instances to the Southern Pacific Company, lessee of the Southern Pacific Railroad Company, and in other instances to the Central Pacific Railroad Company, lessee of the Southern Pacific Railroad Company; will you state in what manner the adjustment was made between the Southern Pacific Railroad Company and its lessees when the rates were allowed to the latter and not to the Southern Pacific Railroad Company direct?

(Same objection.)

A. During the time that the railroad between Goshen and Yuma was leased to the Central Pacific Railroad Company, compensation for United States transportation on that road was withheld by the treasury department on account of the indebtedness of the lessee, the Central Pacific Railroad Company, to the government, owing to the issue of government bonds made for the construction of that road; the settlement with the government, however, for the transportation of mails, as shown by the reports of the postmaster general just quoted, and on the pages named, was made in each case with the Southern Pacific Railroad Company by the United States government, and the Central Pacific lessee received no payment for the transportation, for each of the years named from the time of the commencement of construction from Goshen, California, southwards towards Yuma—

Mr. REDDING.—(Interrupting) Let me interrupt you, Mr. Lansing. When you speak of Goshen do you speak of a portion of the main line road which runs by way of Goshen to Tehachapa and thence by way of Los Angeles to Fort Yuma?

(Same objection.)

Q. You mean on the main line grant?

(Same objection.)

A. Yes, sir, on the main line running southerly through the San Joaquin valley; the line through the upper portion of the valley was constructed by the Central Pacific to Goshen; at Goshen the Southern Pacific construction commenced.

Mr. CALL.—Q. From San Francisco to Goshen was built by the Central Pacific? A. Yes, sir.

Q. And from Goshen below southward it was built by the Southern Pacific Railroad Company?

A. Yes, sir; I was saying that from the commencement of the construction of the Southern Pacific Railroad from Goshen on the main line near Tehachapa Pass toward Yuma the transportation for the United States has been accounted for by the United States government in the name of the Southern Pacific Railroad Company.

Mr. REDDING—Q. With reference to the use of this line of railroad by the government for purposes other than postal, will you state what is the method adopted by the government in calling upon the road to furnish at all times the necessary means of transportation for these purposes. How is the object accomplished by the government?

(Same objection.)

A. In the event that the government has any freight, munitions of war, or anything of that kind that it wishes to ship, it sends its freight to the railroad company's depot and delivers it to the railroad company with a prepared bill of lading which is made on a form prescribed by the war department of the government; this bill of lading is accepted by the railroad company and used in a settlement of its account with the government subsequently for the services and transportation performed.

Q. Do you know as a fact whether or not the Southern Pacific Railroad Company between the points named, and the line thereof, and the rolling stock thereof, have been used by the government of the United States from the date of its construction down to the present time for the

purpose of transporting its munitions of war, troops, and governmental effects?

(Same objection.)

A. Yes, sir, I know that it has been so used continuously.

Q. Is it being used at the present time for these purposes?

(Same objection.)

A. Yes, sir.

Q. Has it been ever since 1878?

(Same objection.)

A. Yes, sir.

Q. You have stated that the pay given to the Southern Pacific Railroad Company by the government for the transportation of the government mail, and for the general system of postal service rendered to the government by the Southern Pacific Railroad Company, between the points named, is less by twenty per cent, or some per cent named, than that allowed other kinds of railroads; what do you mean by that? Will you state why a less percentage is allowed this company than other companies?

(Same objection.)

A. The postal laws fix the compensation for the transportation of mails based upon the service performed, and applying that principle they fixed the rates allowed for all the railroads of the United States; a road receiving pay in proportion to the service performed, and two roads performing the same service receiving equal pay, but with the roads which received the aid of a grant of land from

the government, subject to a certain condition regarding transportation, Congress passed a law allowing these lines but eighty per cent of the amount allowed other roads for similar services.

Mr. CALL.—Q. Was not that regulation made by the secretary of the interior?

A. No, by an act of Congress; this is the act of Congress approved July 12, 1876, Volume 19, United States Statutes, page 82.

Mr. REDDING.—Q. Has the Southern Pacific Railroad Company, one of the defendants in this case, been subjected to this deduction by the government in its pay for transportation of mail and postal service?

(Same objection.)

A. Yes, sir, and it was considered, and has been interpreted by the government to be in conformity with one of the obligations of the contract existing between the railroad company and the government as stated in the granting act, and part of the consideration for the grant of lands.

Q. Has this deduction continued through all these years that you have testified?

(Same objection.)

A. Yes, sir.

Q. What was the last adjustment of rate given to the Southern Pacific Railroad Company as a land grant road under the instructions of the interior department by acts of Congress?

(Same objection.)

A. The Southern Pacific Railroad, under an act of Congress making appropriations for the transportation of

the army for the present fiscal year ending June 30, 1893, was allowed but fifty per cent of the regular rates of transportation for freight and troops.

Q. Was this act of Congress designed to refer to land grant railroads?

(Same objection.)

A. Yes, sir.

Q. Has the interpretation of this act been applied to the Southern Pacific Railroad Company, one of the defendants herein?

(Same objection.)

A. It has.

Q. Do you know whether or not the Southern Pacific Railroad Company, one of the defendants herein, holds itself in position and readiness at all times and under all circumstances and conditions to supply the government of the United States with transportation over its lines of road, and between the points named herein as aforesaid, for all kinds of governmental effects, including postal service, munitions of war, etc.?

(Same objection.)

A. Yes, sir, it is a fact; the Southern Pacific Railroad Company has always recognized its obligation under the granting act to perform all service required by the government at all times.

Q. Has that been a continuous existence of things since the construction of the road down to and including the present time?

(Same objection.)

A. Yes, sir.

Q. How long have you been in the employ of the Southern Pacific Company?

(Same objection.)

A. Since March 1, 1885.

Q. Prior to that time in the employ of what corporation were you?

(Same objection.)

A. I was employed by the Central Pacific Railroad Company prior to that time.

Q. In what capacity?

(Same objection.)

A. As assistant secretary.

Q. Did you in that capacity have charge of the accounts between the Southern Pacific Railroad Company and the Central Pacific Railroad Company as lessee of the Southern Pacific Railroad?

(Same objection.)

A. Yes, sir.

Q. Then your testimony with reference to the relations of the Southern Pacific Railroad Company through its lessee, the Central Pacific Railroad Company, with the government of the United States is based on an intimate knowledge of the occurrences happening in the years named?

(Same objection.)

A. Yes, sir, my experience in connection with the subject extends to the time of the commencement of the construction of the Southern Pacific Railroad from Goshen toward Yuma.

Q. And down to and including the present time?

(Same objection.)

A. Yes, sir.

(The witness was temporarily withdrawn in order to take the testimony of James B. Randol and D. G. Scofield, whose testimony appears in this record next following the testimony of this witness, being so placed for convenience in signing.)

(An adjournment was then taken by consent of counsel until Wednesday, October 4, 1893, at 10:30 A. M.)

San Francisco, Oct. 4, 1893.

Cross-Examination of G. L. Lansing.

Mr. CALL.—Q. Referring to your testimony on direct examination to the effect that the Southern Pacific Company was a lessee of the Southern Pacific Railroad Company of the line from Goshen by way of Los Angeles to the Colorado river—state when that line was leased to the Southern Pacific Company by the Southern Pacific Railroad Company.

A. The lease took effect March 1, 1885; it was dated in February, 1885; the exact date I do not recollect.

Q. Can you produce before the special examiner a copy of the lease? A. Yes, sir.

Mr. CALL.—I ask you to do so.

The WITNESS.—This is the original (producing.

Q. Have you produced before the special examiner the lease referred to? A. Yes, sir.

Q. This is the original lease? A. Yes, sir.

Mr. CALL.—I offer the lease in evidence and ask that the same be marked "Exhibit before the special examiner M."

Have you any objections, Mr. Redding, to the special examiner making a copy of it and certifying to it as a copy?

Mr. REDDING.—Not provided it is made here in the building.

(The lease produced by witness and offered in evidence by Mr. Call is marked by the special examiner "Exhibit before the special examiner, M, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. CALL.—I understood you to say that in reference to the payment by the government for transporting mails over lines of railroad in which the construction was aided by land grants, that the government paid eighty per cent of what was paid on other lines—is that correct?

A. Yes, sir. Eighty per cent of which is paid to other roads for similar service.

Q. Does the same rule prevail with reference to the transportation of troops, and munitions of war and public stores?

A. No, sir, they are paid fifty per cent of what is charged private parties for similar services under the present appropriation acts.

Q. What is the remedy of an aided railroad if the compensation fixed is not satisfactory or is not deemed sufficient by the company?

A. I understand that there is no remedy, that the rate is fixed by the government at its own will in considera-

tion of the stipulations of the contract which are embodied in the granting act, that the government can fix a rate of eighty per cent or of two per cent or of one per cent, if it chooses to do so.

Q. Has the Southern Pacific Company of Kentucky recovered any moneys from the government in the court of claims outside of those allowed by the department for transporting of mails or other government property?

Mr. REDDING.—We will object to the question as being misleading; and request the counsel to specify what he means in reference to the recovery of moneys.

Mr. CALL.—I wish the witness to explain that.

Mr. REDDING.—I object to the question as misleading. The question does not state that it refers to transactions between the Southern Pacific Railroad Company and the government in particular. The Southern Pacific Company is dealing with a half dozen or more companies and I ask that the counsel for the government in order not to mislead the witness specify what particular moneys or suits or claims he refers to and between the government on the one side and the Southern Pacific Railroad Company or the Southern Pacific Company in its dealings with the Southern Pacific Railroad Company on the other.

A. The Southern Pacific Company has received a judgment in the court of claims which has been affirmed by the Supreme Court of the United States for an amount to exceed $1,800,000 for transportation services due it in cash; Congress has never made any appropriation for the payment of this claim; I am not advised whether any por-

tion of the amount is for transportation over the line between Goshen and Yuma or any portion of the Southern Pacific Railroad.

Q. Referring to those lines which are not aided by the government, is the mode for payment by the government the same as over aided lines—that is, is it done as you were stating by means of transportation requests?

A. Yes, sir; the method of accounting and payment between the government and the railroad companies is conducted in the same way between aided lines and non-aided lines; by aided lines I mean lines aided, like the Southern Pacific, by grant of lands and not of subsidy bonds; for lines subsidized by bonds a different method is adopted.

Q. When was that judgment rendered in the court of claims for a million and odd dollars?

A. It was affirmed by the Supreme Court within a year, but I cannot give the date from recollection.

Q. Was it not affirmed by the Supreme Court of the District of Columbia?

A. Oh, I am mistaken about that; it was not appealed on the part of the government from the court of claims.

Mr. REDDING.—Judgment was rendered last January, I believe.

The WITNESS.—I can give you the reference.

Mr. CALL.—Oh, it is not important.

Q. Under what provision of law was that suit brought?

A. I understand under the same provisions of law that any common carrier would bring a suit for transportation services to the government, simply that the ser-

vices had been performed and the compensation was due.

Q. I thought you said that when the rates were fixed by the contract that there was no remedy for the railroad company if it disputed the adequacy of the amount; please explain how that is.

A. I have stated that I did not know that any portion of this judgment, of the amount involved in the suit, had reference to transportation over the lines of the Southern Pacific Railroad, and that upon those lines the eighty per cent was allowed for transportation of the mails under the act of Congress, the granting act; that in the suit, and amount involved in the suit in question, there were, as I understand it, no claims for transportation on that line; I am very sure there was no claim for transportation for disputed amounts of any kind.

Q. How does the amount allowed to the Southern Pacific Railroad under contract compare with amounts allowed in Eastern States?

A. For the portion of the line which has received a grant of lands the government paid eighty per cent for the transportation of mails of the rates allowed for similar service performed by roads in the Eastern States.

Q. Is the rate from Chicago to Mississippi valley States, twenty per cent added to what is paid the Southern Pacific, or is it less than that?

A. I will explain my statement a little more clearly by saying that in the transportation of the mails for the United States compensation is fixed by law and is determined upon the weights of mails carried; the law applies to all railroads in the United States; a special act apply-

ing to the land grant line of the Southern Pacific Railroad provides that the government may fix the rates for the transportation of mails of the Southern Pacific road—

Mr. CALL.—(Interrupting). The postmaster general?

The WITNESS.—The government.

A. (Continuing) And the government subsequently by an act of Congress did fix the rates at eighty per cent for the transportation of mails of those which are provided by the general law prescribing the rates which shall apply to all railroads in the United States, so that the Southern Pacific Railroad receives but eighty per cent of the amount which roads in the Eastern States receive for the transportation of mails where they perform a similar amount of service.

G. L. LANSING.

Exhibit Before the Special Examiner.

"M."

This agreement, made this tenth day of February, 1885, between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the United States and the State of California, the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the Territory of Arizona, the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the Territory of New Mexcio, the Galveston, Harrisburg and San Antonio Railway Company, a corporation duly organized and existing under the laws of the State

of Texas, the Texas and New Orleans Railroad Company, of 1874, a corporation duly organized and existing under the laws of the State of Texas, the Louisiana Western Railroad Company, a corporation duly organized and existing under the laws of the State of Louisiana, Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation duly organized and existing under the laws of the State of Louisiana, and the Mexican International Railroad Company, a corporation duly organized and existing under the laws of the State of Connecticut, witnesseth:

I.

That the said Southern Pacific Railroad Company, organized and existing under the laws of the United States and the State of California, hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof, all of its railroad situated in the State of California, known and designated as the Southern Pacific Railroad of California, with all its branches and all railroads now leased by it, together with the rolling-stock, telegraph lines, tools and property of every kind and nature whatsoever, now in use upon or in connection with said railroads, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use and operate the said property, and to receive the rents, issues and profits thereof.

II.

That the said Southern Pacific Railroad Company, organized and existing under the laws of the Territory of Arizona, hereby leases to the said Southern Pacific Com-

pany for the term of ninety-nine years from the date hereof, all of its railroads situated in the Territory of Arizona, and known and designated as the Southern Pacific Railroad of Arizona, together with all its branches, and all the rolling stock, telegraph lines, tools and property of every kind and nature whatsoever, now in use upon or in connection with said railroad or branches, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use and operate the said property, and to receive the rents, issues and profits thereof.

III.

That the said Southern Pacific Railroad Company, organized and existing under the laws of the Territory of New Mexico, hereby leases to the said Southern Pacific Company, for the term of ninety-nine years from the date hereof, all of its railroad situated in the Territory of New Mexico and known and designated as the Southern Pacific Railroad of New Mexico, together with all its branches and all the rolling stock, telegraph lines, tools and property of every kind and nature whatsoever now in use upon or in connection with said railroad or its branches, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use and operate the said property, and to receive the rents, issues and profits thereof.

IV.

That the said Galveston, Harrisburg and San Antonio Railway Company hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the

date hereof, all of its railroad situated in the State of Texas and known and designated as the Galveston, Harrisburg and San Antonio Railway, with all its branches and all the rolling stock, telegraph lines, tools and property of every kind and nature whatsoever now in use upon or in connection with said railroad or its branches, and together with all the appurtenances thereunto belonging, and all other property now owned, held and possessed by it, with the right to possess, maintain, use and operate the said property, and to receive the rents, issues and profits thereof.

V.

That the said Texas and New Orleans Railroad Company, of 1874, hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof, all of its railroad situated in the State of Texas, and known and designated as the Texas and New Orleans Railroad, of 1874, together with all its branches, and all the rolling stock, telegraph lines, tools and property of every kind and nature whatsoever now in use upon or in connection with said railroad or branches, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use and operate the said property, and to receive the rents, issues and profits thereof.

VI.

That the said Louisiana Western Railroad Company hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof, all of its railroad situated in the States of Texas and Louisiana, and known and designated as the Louisiana Western

Railroad, together with all its branches and all the rolling stock, telegraph lines, tools and property of every kind and nature whatsoever now in use upon or in connection with said railroad or branches, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use and operate the said property, and to receive the rents, issues and profits thereof.

VII.

That the said Morgan's Louisiana and Texas Railroad and Steamship Company hereby leases to the said Southern Pacific Company for a term of ninety-nine years from the date hereof, its railroad situated in the State of Louisiana, and known and designated as the Morgan's Louisiana and Texas Railroad, all the branches thereof, and the rolling stock, telegraph lines, tools and property of every kind and nature whatsoever now in use upon or in connection with said railroad and branches and together with all the appurtenances thereunto belonging *ing;* also all the steamships, steamboats, tugs, wharves, piers, landings, depots, buildings and all other property real and personal, now owned, held or possessed by the said Morgan's Louisiana and Texas Railroad and Steamship Company; with the right to possess, maintain, use and operate the said property, and to receive the rents, issues and profits thereof.

VIII.

That the said Mexican International Railroad Company hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof, all

of its railroad and the branches thereof situated in the Republic of Mexico, known and designated as the Mexican International Railroad, together with all its branches and the rolling stock, telegraph lines, tools and property of every kind and nature whatsoever now in use upon or in connection with said railroad, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use and operate the said property, and to receive the rents, issues and profits thereof.

In consideration of the leases aforesaid, the said Southern Pacific Company agrees to and with the other corporations, parties hereto, that it will keep the said leased property in good order, condition and repair; operate, maintain, add to and better the same at its own expense; pay all taxes legally assessed against or levied thereon; and will, upon the termination of this lease, return the same to the respective parties from which it was leased, or to their successors, with additions and betterments, in as good condition and repair as the same was at the date hereof.

That it hereby assumes and will discharge all the liabilities and obligations of every kind of the said railroad companies, and each of them, except the obligations to pay the principal of their indebtedness, known as the bonded indebtedness, now outstanding and secured by mortgage or deed of trust, or which may hereafter be incurred by either of said companies under the provisions of any existing mortgage or deed of trust, or any mortgage or deed of trust hereafter, with the consent of this company made. That as to such bonded indebtedness, it will

pay off and discharge at maturity the interest upon the same, and will upon demand of either of said railroad companies guarantee in such form as said company may require, the payment of the principal and interest thereof.

That said Southern Pacific Company will annually on the first day of May, pay the following named railroad companies as rental, a sum equal to ninety-three and one-*telfth* (93 1-12) per cent of its net profits—if any net profits there be—for the year ending on the thirty-first day of December next preceding that date, as follows:

To the said Southern Pacific Railroad Company, existing under the laws of the United States and of the State of California, twenty-six and one-half (26½) per cent of said net profits.

To the said Southern Pacific Railroad Company, existing under the laws of the Territory of Arizona, twelve (12) per cent of said net profits.

To the said Southern Pacific Railroad Company, existing under the laws of the Territory of New Mexico, four (4) per cent of said net profits.

To the said Galveston, Harrisburg and San Antonio Railway Company, sixteen and one-quarter (16¼) per cent of said net profits.

To the said Texas and New Orleans Railroad Company, of 1874, seven and one-half (7½) per cent of said net profits.

To the said Louisiana Western Railroad Company, three and one-third (3⅓) per cent of said net profits.

To the said Morgan's Louisiana and Texas Railroad and Steamship Company, twenty-two and one-half (22½) per cent of said net profits.

To the said Mexican International Railroad Company, one (1) per cent of said net profits.

The term net profits as used herein, shall be construed to mean the monies on hand available for dividends after all expenses, payments and disbursements of every nature and kind of the said Southern Pacific Company—except for the rental of railroads now or hereafter leased by said company—have been deducted.

In testimony whereof, the parties hereto have caused these presents to be signed by their respective presidents and countersigned by their secretaries, and their corporate seals to be hereunto affixed, pursuant to orders of their respective boards of directors, on the day and year first herein written.

In Octuple.

W. E. BROWN,
President Southern Pacific Company.

H. C. NASH,
Secretary Southern Pacific Company.

[Seal]

CHAS. CROCKER,
President Southern Pacific Railroad Company (Of California.)

J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company (Of California.)

[Seal]

CHAS. F. CROCKER,
President Southern Pacific Railroad Company (Of Arizona.)

F. S. DOUGHTY,
Secretary Southern Pacific Railroad Company
[Seal] (Of Arizona).

CHAS. F. CROCKER,
President Southern Pacific Railroad Company (of New Mexico).

GEO. E. GRAY,
Secretary Southern Pacific Railroad Company (Of New Mexico.)

[Seal]

T. W. PIERCE,
President Galveston, Harrisburg and San Antonio Railway Company.

CHAS. BABBIDGE,
Assistant Secretary, Galveston, Harrisburg and San Antonio Railway Company.

[Seal]

C. P. HUNTINGTON,
President Texas and New Orleans Railroad Company, of 1874.

I. E. GATES,
Secretary Texas and New Orleans Railroad Company, of 1874.

[Seal]

C. P. HUNTINGTON,
President Louisiana Western Railroad Company.

I. E. GATES,
Secretary Louisiana Western Railroad Company.

[Seal]

A. C. HUTCHINSON,
President Morgan's Louisiana and Texas Railroad and Steamship Company.

B. RICHARDSON,
Secretary Morgan's Louisiana and Texas Railroad and Steamship Company.

[Seal]

C. P. HUNTINGTON,
President Mexican International Railroad Company.

F. H. DAVIS,
Secretary Mexican International Railroad Company.

(Seal.)

[Endorsed]: Agreement Southern Pacific Company and Southern Pacific Railroad of California, Southern Pacific Railroad of Arizona, Southern Pacific Railroad of New Mexico, Galveston, Harrisburg & San Antonio Railway, Texas & New Orleans Railroad, Louisiana Western Railroad, Morgan's Louisiana & Texas Railroad and Steamship Company, Mexican International Railroad. Dated February 10, 1885 (Southern Pacific Company No. 3. Documents.) (Marked) Exhibit before the Special Examiner "M," Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 14, 1893.

Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Testimony of CHARLES F. CROCKER.

CHARLES F. CROCKER, called as a witness on behalf of defendants, being duly sworn, testified as follows, said testimony being taken on September 14, 1893, and inserted at this point in the record for convenience in signing.

Direct Examination.

Mr. REDDING.—Q. Are you an officer of the Southern Pacific Railroad Company? A. I am.

Q. What office do you hold in that company?

A. President.

Q. How long have you been president of the Company? A. At least five years.

Q. Were you an officer of the company other than president prior to that time?

A. I was one of the vice-presidents.

Q. How long have you been an officer of the company and connected with it, covering what period of years?

A. A director or executive officer for from ten to twelve years.

Q. The title of this suit is The United States of America against the Southern Pacific Railroad Company and others, and the suit involves a land grant made by Congress to the Southern Pacific Railroad Company, dated March 3, 1871, extending from Tehachapa by way of Los Angeles to Fort Yuma; is that the Company of which you are president of which you are speaking? A. It is.

Q. Do you know whether or not the identity of the Southern Pacific Railroad Company has been changed, or

whether the company itself has been changed by any of its articles of amalgamation and consolidation which it has filed during the last twenty years, or whether it has been the intention of the officers of the company to maintain the same corporation and the same identity?

(Question objected to by Mr. Call as incompetent, immaterial, and not the best evidence, and as involving a conclusion of law.)

A. The identity and chcaracter of the Southern Pacific Railroad Company of California was preserved in the amalgamation and proceedings which have been held during my term of office as a director and executive officer in that company; I personally instructed the officers of the law department who prepared the papers in the proceedings which were had in 1888, at the time various corporations were amalgamated into the Southern Pacific Railroad of California——

Mr. REDDING (interrupting)—That is the defendant in this action, the Southern Pacific Railroad Company?

THE WITNESS.—Yes, sir, the company to which the United States government granted certain sections of land.

A. (Continuing)—to preserve the character and identity of that corporation; it was reported to me that the law permitted that to be done, and they were instructed to proceed upon that line.

Q. Do you know as a fact whether or not there was an intention on the part of the directors of the Southern Pacific Railroad Company, and the executive officers, and those in authority, to preserve the identity and same char-

acter of the Southern Pacific Railroad Company to which Congress made this land grant, or otherwise?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and as calling for a conclusion of law, and upon the further ground that the intentions of the several companies amalgamating can be gathered and shown only by the proceedings had upon consolidation and by the written evidence of the amalgamation of the roads.)

A. It was intended to preserve the identity and character of the Southern Pacific Railroad Company of California as it existed previous to that amalgamation, and the legal officers of the company were instructed to prepare the papers accordingly.

Q. Were you present at the conferences of the directors of the company anterior to taking in these other corporations?

(Same objection.)

A. I was present.

Q. Did you take part in the proceedings?

(Same objection.)

A. I did.

Q. Will you state whether or not you gave your own views at those meetings as to what you wanted done as an officer and director of the Company?

(Same objection.)

A. I did, according to my answers already given to these questions.

Q. Do you know whether or not the land department of the Southern Pacific Railroad Company has remained

the same ever since its inception, so far as referring to one land grant and one corporation, or whether it has been changed?

(Same objection.)

A. It has remained the same.

Q. Were you an officer of the company, or in anywise connected with it during the period when prior amalgamations were made, for instance the one of 1873?

(Same objection.)

A. I was not.

Cross-Examination.

Mr. CALL.—Q. Were you an officer of the company, that is, a general officer, at the time of the amalgamation of 1874? A. No, sir; I was not.

CHAS. F. CROCKER.

San Francisco, Thursday, Sept. 28, 1893.

2:15 P. M.

Testimony of J. L. WILLCUTT.

J. L. WILLCUTT, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

Mr. REDDING.—Q. What is your present occupation?

A. Secretary of the Southern Pacific Railroad Company and other corporations.

Q. How long have you been secretary of the Southern Pacific Railroad Company?

A. Since October, 1870.

Q. In what occupation were you before that time?

A. Secretary of the San Francisco & San Jose Railroad Company, which was one of several corporations that were consolidated into the Southern Pacific Railroad Company.

Q. Can you produce the resolution of the board of directors of the Southern Pacific Railroad Company, or a copy thereof, showing when you were appointed secretary, if desired by the government counsel?

A. I can give you a certified copy of the record of the proceedings of the meeting at which I was elected.

Mr. REDDING.—I wish you would do so at your convenience.

Q. The Congress of the United States made a grant of lands on March 3, 1871, to the Southern Pacific Railroad Company, known as the branch line grant from Tehachapa by the way of Los Angeles to Fort Yuma; can you produce the minutes of the Southern Pacific Railroad Company at about that time, wherein, if it is a fact that the Southern Pacific Railroad Company accepted the terms, impositions and conditions of that grant?

A. I can do so.

Q. Will you please produce them?

(Witness produces a book which is endorsed "Record A, Southern Pacific Railroad Company.")

Q. What volume have you produced?

A. Volume A of the minutes of the meetings of the Southern Pacific Railroad Company, both of the stockholders and the directors.

Q. Will you please turn to that page of the record wherein you were declared elected the secretary of the

company, and will you read, and quote in reading that portion of the record of the particular meeting, giving it as to date, when you were elected?

Mr. CALL.—I object to the question, and to the testimony asked for, upon the ground that the same is incompetent, immaterial and irrelevant; and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation, nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the act of Congress of July 27, 1866, and the act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions which are in evidence herein.

A. (Reads.) "At a meeting of the board of directors of the Southern Pacific Railroad Company held on Wednesday, the twelfth day of October, 1870, for the purpose of organizing as a board and the election of the necessary officers for the ensuing year . . . . J. L. Willcutt was nominated for secretary, and receiving the unani-

mous vote of the board was declared duly elected secretary of the company."

(I hereby certify that I have compared the statement of the witness in the foregoing answer with the minutes of the meeting of the board of directors of the Southern Pacific Railroad Company, held on Wednesday, the twelfth day of October, 1870, as they appear on page 6 of the volume endorsed "Record A, Southern Pacific Railroad Company," and find it to be a full, true and correct statement of the words appearing in said minutes in that particular.

STEPHEN POTTER,
Special Examiner.)

Mr. REDDING.—I suppose that the same agreement between us will be followed in this case, that where the special examiner certifies to the correctness of a portion of any document or resolution, that that will suffice instead of putting the entire volume in evidence?

Mr. CALL.—I have no objections to the special examiner making a copy of such parts of the written evidence as you direct him to make in this instance, and that it may stand in lieu of the original, subject to the same objections made.

Mr. REDDING.—Mr. Examiner, if the quotation of the witness from the original record is correct, will you please state so in parenthesis after the quotation in your record of this testimony.

Q. Will you please turn to the resolution of the board of directors of the Southern Pacific Railroad Company, if such resolution exists, wherein it was resolved to ac-

cept the terms, impositions and conditions of the act of Congress of March 3, 1871, above referred to, and will you read that resolution from your original record?

(Same objection.)

A. (Reads.) "At a meeting of the board of directors held on May 16, 1871, the following resolution was presented by Lloyd Tevis, and adopted by a unanimous vote:

"Resolved, that thiscompany will and does hereby accept the terms, conditions and impositions of the act of Congress of the United States entitled 'An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes,' approved March 3, 1871, and that a copy of this resolution of acceptance, certified under the seal of this company, be forwarded to and filed with the secretary of the interior."

(I hereby certify that I have compared the statement of the witness in the foregoing answer with the minutes of the meeting of the board of directors of the Southern Pacific Railroad Company held on May 16, 1871, as they appear on page 41 of the volume endorsed "Record A, Southern Pacific Railroad Company," and find it to be a full, true and correct statement of the words appearing in said minutes in that particular.

STEPHEN POTTER,
Special Examiner.)

Mr. CALL.—The evidence is objected to upon the ground that the same is incompetent, immaterial and irrelevant; and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation, nor the same South-

ern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the act of Congress of July 27, 1866, and the act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground *that* that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions which are in evidence herein; and upon the further ground that it is not the best evidence of the matter sought to be adduced.

Mr. REDDING.—Q. Is that resolution followed by the seal of the company and the signature of the secretary of the company, certifying that the resolution was passed?

A. It is not usual to place any seal, but to sign upon the records by myself, as secretary of the meeting, which was done in this case.

Q. Has a copy of this resolution been forwarded by you as secretary and deposited in the interior department?

(Same objection.)

A. It has been.

Q. What directors were present at that meeting of the company when that resolution was passed?

(Same objection.)

A. Charles Crocker, Leland Stanford, Lloyd Tevis, Charles Mayne and Peter Donahue.

Q. Who were the directors of the Southern Pacific Railroad Company at that time?

(Same objection.)

A. Those already named, together with C. P. Huntington and Mark Hopkins.

Q. Is that the original record that you are reading from?

(Same objection.)

A. Yes, sir.

Q. Is that your signature attached to the resolution?

(Same objection.)

A. Yes, sir; attached to the proceedings of the meeting.

Q. Did you sign your name there?

(Same objection.)

A. Yes, sir.

Q. Were you present at the meeting?

(Same objection.)

A. Yes, sir.

Q. Did you hear the resolution proposed and carried?

(Same objection.)

A. I did; I read it myself.

Q. Were those gentlemen present that you have enumerated?

(Same objection.)

A. They were.

Q. Did you see them there?

(Same objection.)

A. Yes, sir.

Q. Have you, as secretary of the Southern Pacific Railroad Company, had in charge, or been instrumental in making any reports to the interior department of the government of the proceedings of this railroad company subsequent to March 3, 1871, and in pursuance of the act of Congress last above referred to?

(Same objection.)

A. I have.

Q. Will you state in what manner reports have been made, and for what purpose, and generally with reference to what subject matter, from the Southern Pacific Railroad Company to the interior department?

(Same objection.)

A. I have here a complete list of such reports, which I can give *in extenso*, if they are wished.

Q. What are those reports in general?

(Same objection.)

A. The operations of the road.

Q. Please give a list of these reports that have been made through your instrumentality to the interior department subsequent to 1870?

(Same objection.)

A. In 1871, 1872, 1873, 1874, 1875, 1876, and 1877 annual reports were made to the secretary of the interior for the year ending June 30th. They called for:

1st. Names and residences of stockholders.

2d. Names and residences of directors.

3d. Amount of stock subscribed and amount of stock actually paid in.

4th. A description of the lines of road surveyed; of the lines thereof fixed upon for the construction of the road and the total cost of such surveys.

5th. The amount received from passengers on the road.

6th. The amount received for freight thereon.

7th. The expense of said road and its fixtures, total and annual separately.

8th. The indebtedness of said company, setting forth the various kinds thereof,

and were accompanied by the reports of the chief engineer, superintendent and land agent.

For the years 1878, 1879, and 1880 semi-annual and annual reports were made to the United States auditor of Railroad accounts.

The report to June 30, 1878, called for:

Names and residences of officers and directors, with business address.

Copies of printed reports of the company for years 1873, to 1877, inclusive.

Copies of all schedules of rates, passenger and freight.

Copies of all joint schedule of rates, passenger and freight.

Copies of all contracts for special rates, passenger and freight.

Debit and credit footings of ledger on June 30, 1877, December 31, 1877, and June 30, 1878.

Copies of contracts with any telegraph company, sleep-

ing-car company and express company or fast freight line or transportation company.

Copy of by-laws.

Revenue from all sources for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Special report of ownership and control of road.

Copy of lease with Central Pacific Railroad Company.

Copies of articles of association with San Francisco & San Jose Railroad Company et als., Southern Pacific Branch Railroad Company, and Los Angeles & San Pedro Railroad Company.

Statistics of passenger and freight traffic for year ending December 31, 1877, and 6 months ending June 30, 1878.

Statement showing kinds and amount of freight moved for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Operating and other expenses for six months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Income expenses for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Amount expended in construction and improvements for six months ending June 30, 1877, December 31, 1877, and June 30, 1878, and total cost of road to June 30, 1878.

Statistics of employes, materials, buildings, et cetera, and general and income expenses for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Accidents, casualties, et cetera, for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Funded debt and sinking funds for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Capital stock for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

List of stocks and bonds of other railroads and corporations owned and held on June 30, 1877, December 31, 1877, and June 30, 1878.

List of locomotives and tenders owned June 30, 1878.

List and description of cars.

A report (in book form) for the half year ending December 31, 1878, called for.

Corporate name and title of company.

Date of incorporation.

Previous name or names.

Date of opening entire main line to public business.

With what other companies consolidated and dates of consolidation.

Length and termini of projected road.

Termini of main line and of branches as constructed.

Location of principal business office where stockholders and directors meet.

Location of offices for transfer of stock.

Location of offices for payment of interest.

Location of general business or operating office.

Present number of stockholders.

Date of annual meeting for election of directors.

Dates of regular meetings of directors.

Date of close of company's fiscal year.

Officers: Name, title, postoffice address.

Directors: Name, postoffice address, expiration of term.

Capital stock:

No. of shares, common, preferred, total.

Authorized by law or charter.

Issued for actual cash.

Issued on account of construction.

Issued for other purposes.

Issued for purchase of other lines.

Amount outstanding.

Increase or decrease during the half year.

Par value of shares.

Average price at which stock was disposed of per share.

Rate of interest or dividend on preferred stock.

Funded debt.

Designation of lien.

Coupon or registered.

Interest, rate per cent per annum.

Date of issue.

Term of years.

Amount.

Amount realized thereon.

Cost of construction—with items in detail.

Additions and betterments during the half year.

Cost of rolling stock—with items in detail.

Additions and betterments during the half year.

Earnings (by months), passenger, freight, mail, express, et cetera.

Operating expenses (by months), in detail.

Operations of the land department—financial.

Receipts and expenses in detail apportioned—Congressional lands—all lands.

Expenditures and revenue—in detail.

General balance sheet—at closing of accounts December 31, 1878.

Traffic and mileage statistics—passenger.

Traffic and mileage statistics—freight.

Freight classificatiens (2 forms.)

Express and transportation companies, et cetera.

Brief statement of existing contracts and agreements with express companies, sleeping-car or dining-car companies, freight or transportation companies, other railroad companies, steamboat or steamship companies or other companies or persons concerning the transportation of freight or passengers.

Brief statement of the terms and conditions of all existing leases affecting this company.

Operations of the land department—statistical.

Congressional lands—Acquired.

No. of acres during half year. Total at close of half year.

By United States patent.

By patent of State.

By cancellation of contracts.

Congressional lands—disposed of—same as above.

For cash.

On time contracts.

As town lots for cash.

As town lots on time contracts.

Miscellaneous lands—Acquired by purchase.

No. of acres during half year. Total at close of half year.

By cancellation of contracts.

Miscellaneous lands disposed of for cash.

No. of acres during half year. Total at close of half year.

On time contracts.

As town lots for cash.

As town lots on time contracts.

Characteristics of road—Miles of track owned, leased, total.

Length, main line, extension lines, branch lines, double track, side track.

Miles laid with iron rail—American—foreign.

Miles laid with steel rail— American—foreign.

(Constructed during half year—total at end of year.)

Grades—Ascending, descending, total.

Curves—Total miles curved line, et cetera.

Bridges—Stone, iron suspension, iron, other, wood, et cetera.

Miscellaneous characteristics.

Description of rolling stock—locomotives, cars, et cetera, in detail.

Miscellaneous statistics: Fuel used, speed of trains, accidents, all in detail.

Employes: Number, average rate of pay, character of service

A report was made for the half year ending June 30, 1879, in same book form.

Reports for the half year ending December 31, 1879, June 30, 1880, and December 31, 1880, were made in exhaustive detail in book form designated as 8-002.

In addition to these reports there were furnished (on sheet forms sent to us by the United States auditor of railroad accounts) reports of revenue, operating and income expenses, tonnage, mileage, etc. for same periods.

Commencing with 1881 and since that year the reports have been made to the commissioner of railroads and for the half years ending June 30, 1881, December 31, 1881, June 30, 1882, December 31, 1882, June 30, 1883, and December 31, 1883, were made in same book form (8-002) and in addition we also furnished upon separate sheets statements of earnings and expenses by months for the years ending December 31, 1881, 1882, and 1883.

For the years ending June 30, 1884, and 1885, and the half year ending December 31, 1885, reports were made in book form designated 8-008, the first two periods being accompanied by same statements of earnings and expenses as before.

Commencing with the year ending December 31, 1885, yearly and half yearly reports were made in book form designated "A" and "B" respectively up to and including the year ending December 31, 1888, since which date only annual reports have been asked for and made, viz: for the years ending June 30, 1889 and 1890, 1891, 1892, and 1893.

Mr. REDDING. Q. You state throughout this list of reports that they were asked for; by whom were they asked for?

(Same objection.)

A. The officers to whom the reports were made?

Q. To whom were these reports made?

(Same objection.)

A. As stated in the reports, part of the time to the secretary of the interior, part of the time to the United States auditor of railroad accounts.

Q. In other words, to various officers of the government?

(Same objection.)

A. Yes, sir.

Q. Have you in your possession, and can you produce any of these requests made upon the Southern Pacific Railroad Company by officers of the government?

(Same objection.)

A. Yes, sir, they are all on file in my office.

Q. Have these annual reports and semi-annual reports of the Southern Pacific Railroad Company been made and forwarded at the direct instigation of the government of the United States through its officers?

(Same objection.)

A. They have been.

(An adjournment was taken by consent of counsel until Thursday, September 29, 1893, at 10:30 A. M.)

San Francisco, Sept. 30, 1893.

Direct Examination of J. L. Willcutt (Resumed.)

Mr. REDDING.—Q. Will you state generally in what manner you have been requested or ordered to make reports to the government of the United States, as secretary of the Southern Pacific Railroad Company, of its actions, transactions, and doings under its land grants of July 27, 1866, known as the main line grant, and of March 3, 1871, known as the branch line grant?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant; and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation nor the same Southern Pacific Railroad Company defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of July 27, 1866, and the Act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the supreme court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions which are in evidence herein, and upon the further ground that it is not

the best evidence of the matters sought to be adduced.)

A. In some instances the forms upon which the reports were made have been sent to me direct, and sometimes through the Southern Pacific Company as lessee of various railroad properties.

Q. Have you been able to procure from your archives any original correspondence between the government of the United States, through its officers, on the one side, and the Southern Pacific Railroad Company, through its officers, on the other side, in relation to the branch line grant of March 3, 1871?

(Same objection.)

A. I have considerable of such correspondence upon my files.

Mr. REDDING.—Defendants offer in evidence an original letter from the department of the interior and from the acting secretary of the interior to the president of the Southern Pacific Railroad Company, dated April 3, 1871; and ask that it be marked "Defendants' Exhibit before the special examiner, No. 65"; and ask that the special examiner make a certified copy of the same in lieu of the original.

(Same objection.)

(The letter from the department of the interior and from the acting secretary of the interior to the president of the Southern Pacific Railroad Company, dated April 3, 1871, is marked by the special examiner "Defendant's Exhibit before the special examiner No. 65, Stephen Potter, special examiner", and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants offer in evidence original letter from the department of the interior to the president of the Southern Pacific Railroad Company, and from the secretary of the interior, dated August 5, 1868, and ask that it be marked "Defendants' Exhibit before the special examiner No. 66," and which reads as follows:

Mr. CALL.—I object, in addition to the grounds above mentioned, to reading matters into the record, where they are offered in evidence as exhibits, on the ground that it encumbers the record, and is superfluous.

Mr. REDDING.—(Reads.) "Sir: I invite your attention to an act entitled 'An act relative to filing reports of railroad companies,' approved June 25, 1868.

"It will be perceived that the reports required by the Act of July 1, 1862, and the acts mandatory thereof, to be made to the secretary of the treasury, are hereafter to be made to the secretary of the interior' on or before the 'first day of October of each year.'

"Very respectfully,

"Your obedient servant,

O. H. BROWNING,

"Secretary.

"President of the

"Southern Pacific Railroad Company,

"San Francisco, Cal."

Same objection.

(Letter from the department of the interior to the president of the Southern Pacific Railroad Company and from the secretary of the interior, dated August 5, 1868, is marked by the special examiner "Defendants' Exhibit

before the special examiner No. 66, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence a letter from the department of the interior, dated September 26, 1868, to the president of the Southern Pacific Railroad Company, requesting the said company to furnish a report of the progress and condition of the road, and ask that it be marked "Defendants' Exhibit before the special examiner No. 67."

Mr. CALL.—The admission of the letter is objected to upon the ground that the same is incompetent, immaterial and irrelevant; and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation, nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the act of Congress of July 27, 1866, and the act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic and Pacific Railroad Company, and reserved before the Southern Pacific Railroad Company, filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions

which are in evidence herein; and upon the further ground that it is not the best evidence of the matters sought to be adduced.)

(The letter from the department of the interior, dated September 26, 1868, to the president of the Southern Pacific Railroad Company, requesting the said company to furnish a report of the progress and condition of the road is marked by the special examiner "Defendants' Exhibit before the special examiner No. 67, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the department of the interior, dated Washington, August 31, 1870, directed to the president of the Southern Pacific Railroad Company, calling for reports of the said company to be made to the interior department, and ask that it be marked "Defendants' Exhibit before the special examiner No. 68."

Same objection.

(Letter from the department of the interior, dated Washington, August 31, 1870, directed to the president of the Southern Pacific Railroad Company, calling for reports of the said company to be made to the interior department is marked by the special examiner "Defendants' Exhibit before the special examiner No. 68, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the secretary of the interior, department of the interior, dated the first of September, 1876, addressed to the president of the Southern Pacific Railroad

Company, and enclosing a printed circular issued by the department on the twenty-sixth of October, 1872, concerning the annual reports of railroad companies which the law requires to be filed in the interior department, and requesting that reports in conformity with said printed circular be made, and ask that a copy of said letter, with the copy of the printed circular attached be marked "Defendants' Exhibit before the special examiner No. 69."

Same objection.

(Letter from the secretary of the interior, department of the interior, dated the first of September, 1876, and addressed to the president of the Southern Pacific Railroad Company, and enclosing a printed circular issued by the department on the twenty-sixth of October, 1872, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 69, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence a series of letters from the interior department, and directed to the officers of the Southern Pacific Railroad Company, calling upon them for annual, semi-annual and other reports, of the proceedings of said company, and between the dates of July 13, 1878, and May 12, 1881, acknowledging the receipt of said reports in certain instances, and ask that the same be marked "Defendants' Exhibit before the special examiner No. 70," and that the special examiner make certified copies of all these exhibits heretofore offered in the shape

of this correspondence, and hereafter to be offered, and when certified to be substituted in lieu of the originals.

Same objection.

(A series of letters from the interior department directed to the officers of the Southern Pacific Railroad Company calling upon them for annual, semi-annual and other reports of the proceedings of said company, dated respectfully, July 13, 1878, July 22, 1878, July 26, 1878, July 29, 1878, August 1, 1878, August 27, 1878, September 3, 1878, September 9, 1878, September 20, 1878, September 27, 1878, October 1, 1878, October 4, 1878, October 7, 1878, October 10, 1878, October 12, 1878, October 15, 1878, October 16, 1878, October 17, 1878, October 19, 1878, October 22, 1878, October 24, 1878, April 17, 1879, May 17, 1879, September 1, 1879, February 28, 1880, March 18, 1880, March 22, 1880, May 6, 1880, July 2, 1880, July 22, 1880, September 7, 1880, September 18, 1880, March 1, 1881, March 19, 1881, April 19, 1881, May 12, 1881, May 12, 1881, are marked by the special examiner "Defendants' Exhibit before the special examiner No. 70, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence a letter from the department of the interior, secretary of the interior of October 2, 1868, acknowledging receipt of the annual report of the Southern Pacific Railroad Company, addressed to the president of the Southern Pacific Railroad Company, and ask that it be marked "Defendants' Exhibit before the special examiner No. 71."

Same objection.

(Letter from the department of the interior, dated October 2, 1868, acknowledging receipt of the annual report of the Southern Pacific Railroad Company, addressed to the president of the Southern Pacific Railroad Company is marked by the special examiner, "Defendants' Exhibit before the special examiner No. 71, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the department of the interior, office of the commissioner of railroads, dated Washington, D. C., November 2, 1881, to the secretary of the Southern Pacific Railroad Company and signed by Jos. K. McCammon, commissioner, acknowledging the receipt of semi-annual report of the Southern Pacific Railroad Company for the six months ending June 30, 1881, and ask that it be marked "Defendants' Exhibit before the special examiner No. 72."

Same objection.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, D. C., November 2, 1881, to the secretary of the Southern Pacific Railroad Company, signed by Jos. K. McCammon, commissioner, acknowledging the receipt of semi-annual report of the Southern Pacific Railroad Company for the six months ending June 30, 1881, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 72, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence

letter from the department of the interior, office of commissioner of railroads, dated Washington, D. C., February 1, 1882, signed by the commissioner, and addressed to the secretary of the Southern Pacific Railroad Company, acknowledging the statistical enclosures of annual reports for 1880, and ask that it be marked "Defendants' Exhibit before the special examiner No. 73."

Same objection.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, D. C., February 1, 1882, signed Jos. K. McCammon, commissioner, per W. M. F., addressed to the secretary of the Southern Pacific Railroad Company, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 73, Stephen Potter, special examiner"; and certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the department of the interior, office of commissioner of railroads, dated Washington, D. C., May 20, 1882, addressed to the secretary of the Southern Pacific Railroad Company, acknowledging receipt of the report for the half year ending December 31, 1881, of the Southern Pacific Railroad Company, and ask that it be marked "Defendants' Exhibit before the special examiner No. 74."

Same objection.

(Letter from the department of the interior, office of commissioner od railroads, dated Washington, D. C., May 20, 1882, addressed to the secretary of the Southern Pacific Railroad Company, acknowledging receipt of the report for the half year, ending December 31, 1881, of

the Southern Pacific Railroad Company, is marked "*D*y the special examiner "Defendants' Exhibit before the special examiner No. 74, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the department of the interior, office of commissioner of railroads, Washington, D. C., November 9, 1882, signed by the commissioner, and addressed to the secretary of the Southern Pacific Railroad Company, acknowledging receipt of the report of the Southern Pacific Railroad Company for the half year, ending June 30, 1882, and ask that it be marked "Defendants' Exhibit before the special examiner No. 75.")

Same objection.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, D. C., November 9, 1882, signed William H. Armstrong, commissioner per F. B. P., addressed to the secretary of the Southern Pacific Railroad Company, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 75, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the department of the interior, office of commissioner of railroads, dated Washington, D. C., August 11, 1883, and addressed to the secretary of the Southern Pacific Railroad Company, acknowledging receipt of the report of the Southern Pacific Railroad Company for the half year ending December 31, 1882, signed by the com-

missioner, and ask that it be marked "Defendants' Exhibit before the special examiner No. 76."

Same objection.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, D. C., August 11, 1883, addressed to the secretary of the Southern Pacific Railroad Company, acknowledging receipt of report of the Southern Pacific Railroad Company for the half year ending December 31, 1882, signed W. H. Armstrong, commissioner, per T. J. Walker, is marked by the special examiner "Defendants' Exhibit before the special examiner, No. 76, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the department of the interior, office of commissioner of railroads, dated Washington, April 3, 1884, addressed to the secretary of the Southern Pacific Railroad Company and signed by the commissioner, instructing the Southern Pacific Railroad Company to render annual report in lieu of the half yearly reports heretofore required, and ask that it be marked "Defendants' Exhibit before the special examiner No. 77."

Same objection.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, April 3, 1884, addressed to the secretary of the Southern Pacific Railroad Company and signed F. B. Pickerill for the commissioner, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 77, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the department of the interior office of commissioner of railroads, dated Washington, September 6, 1884, addressed to the secretary of the Southern Pacific Railroad Company and signed by Thomas J. Walker, in charge of office in the commissioner's absence, acknowledging the receipt of the report of the Southern Pacific Railroad Company for 1884, and ask that it be marked "Defendants' Exhibit before the special examiner No. 78."

Same objection.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, September 6, 1884, addressed to the secretary of the Southern Pacific Railroad Company, signed by Thomas J. Walker, in charge of office in the commissioner's absence, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 78, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the department of the interior, office of commissioner of railroads, dated Washington, February 10, 1885, signed by the commissioner, and addressed to the secretary of the Southern Pacific Railroad Company, acknowledging the two full sets of reports of the Southern Pacific Railroad Company, and ask that it be marked "Defendants' Exhibit before the special examiner No. 79."

Same objection.

(Letter from the department of the interior, office of

commissioner of railroads, dated Washington, February 10, 1885, signed F. B. Pickerill, and addressed to the secretary of the Southern Pacific Railroad Company, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 79, Stephen Potter special examiner"; and a certified copy thereof is attached hereto.

Mr. REDDING.—Defendants next offer in evidence a letter from the office of the commissioner of railroads, department of the interior, dated Washington, May 22, 1885, addressed to J. L. Willcutt, secretary of the Southern Pacific Railroad Company, signed by the commissioner stating that the obligations of the Southern Pacific Railroad Company of California to the United States government are in no manner affected by any leases, and that therefore the reports and statements of operations of the company shall be sent on hereafter as heretofore, and ask that it be marked "Defendants' Exhibit before the special examiner No. 80."

Same objection.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, May 22, 1885, addressed to J. L. Willcutt, secretary of the Southern Pacific Railroad Company, signed J. E. Johnston, commissioner, is marked by the special examiner, "Defendants' Exhibit before the special examiner No. 80, Stephen Potter special examiner"; a certifiec copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the department of the interior, office of com-

missioner of railroads, dated Washington, December 21, 1885, addressed to the president of the Southern Pacific Railroad Company, and enclosing rules established by the secretary of the interior on the subject of the reports and accounts to be furnished the interior department by the Southern Pacific Railroad Company, and ask that it be marked "Defendants' Exhibit before the special examiner No. 81."

Same objection.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, December 21,1885,addressed to the president of the Southern Pacific Railroad Company, and signed J. E. Johnston, commissioner, enclosing rules established by the secretary of the interior, on the subject of the reports and accounts to be furnished the interior department by the Southern Pacific Railroad Company, together with the enclosure, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 81, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the department of the interior, office of commissioner of railroads, dated Washington, August 30, 1886, and signed by the commissioner in charge, addressed to the secretary of the Southern Pacific Railroad Company acknowledging the receipt of reports for that year, ending June 30, 1866, and ask that it be marked "Defendants' Exhibit before the special examiner No. 82."

Same objection.

(Letter from department of the interior, office of commissioner of railroads, dated Washington, August 30, 1886, addressed to the secretary of the Southern Pacific Railroad Company, and signed "Very respectfully, in the absence of the commissioner, Edward Herrick, in charge," is marked by the special examiner, "Defendants' Exhibit before the special examiner No. 82, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence letter from the department of the interior, office of commissioner of railroads, dated Washington, D. C., May 7, 1887, signed by the commissioner, addressed to the secretary of the Southern Pacific Railroad Company, and acknowledging the receipt of reports of the Southern Pacific Railroad Company forms A and B, for December 31, 1886.

Same objection.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, May 7, 1887, addressed to the secretary of the Southern Pacific Railroad Company, signed "Edward Herrick, for the commissioner," is marked by the special examiner "Defendants' Exhibit before the special examiner No. 83," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Q. Mr. Willcutt, have you received instructions from the department of the interior enclosing blank forms for filling in and forwarding to the interior department of the United States, which forms when filled in are to show the reports of the proceedings and

transactions of the Southern Pacific Railroad Company for the years indicated.

Same objection.

A. I have since the year 1878; prior to that I have not; I had a written form of report up to and including the year 1877; since then they have furnished me with blanks.

Q. Has the interior department from time to time changed the forms of those blanks sent to your office?

Same objection.

A. Yes, sir.

Mr. REDDING.—Defendants next offer in evidence letter dated May 7, 1887, from the department of the interior, office of commissioner of railroads, addressed to J. L. Willcutt, Esq., secretary of the Southern Pacific Railroad Company, signed by Edward Herrick, for the commissioner, enclosing a supply of blank forms as follows "3 forms 8-002," and ask that it be marked "Defendants' Exhibit before the special examiner No. 84."

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the act of Congress of July 27, 1866, and the act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic and

Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions which are in evidence herein; and upon the further grounds that it is not the best evidence of the matters sought to be adduced; and upon the further ground that it is not an official letter by any officer of the United States authorized to send such letter.)

(Letter dated Washington, May 7, 1887, from the department of the interior, office of commissioner of railroads, addressed to the secretary of the Southern Pacific Railroad Company, and signed by Edward Herrick, for the commissioner, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 84, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Q. Were three forms 8-002 enclosed you in such letter of May 7, 1887?

Same objection.

A. Probably sent in a separate package; they were received by me.

Q. Did you as secretary of the Southern Pacific Railroad Company make out the semi-annual reports on said forms?

Same objection.

A. I did.

Q. And forward them?

Same objection.

A. I did.

Q. Have you from year to year, as indicated in these letters, and at the times indicated in these letters, which letters show the receipt of these reports, made out reports in accordance with the forms furnished you as secretary of the Southern Pacific Railroad Company by the interior department?

Same objection.

A. Yes, sir.

Mr. CALL.—I want to say here that as to any letters which are signed by the secretary of the interior, or his proper assistant, or acting secretary of the interior, I have no objections to the special examiner making certified copies to stand in lieu of the originals; but as to any letters here which are not signed in that manner, I wish the originals to be introduced in evidence, and I shall not consent to copies being made of them. That includes the letter just offered, dated May 7, 1887.

Mr. REDDING.—We have no objection to letting the original letter go in.

Defendants next offer in evidence letter from the department of the interior, office of commissioner of railroads, dated Washington, D. C., September 17, 1887, to the secretary of the Southern Pacific Railroad Company, signed by Edward Herrick, for the commissioner, acknowledging receipt of report form B, for June 30, 1887.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that the Southern Pacific Railroad Company therein referred to

is not the same corporation nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the act of Congress of July 27, 1866, and the act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic and Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its maps of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions which are in evidence herein; and upon the further ground that it is not the best evidence of the matters sought to be adduced; and upon the further ground that it is not an official letter by any officer of the United States authorized to send such letter; and also upon the further ground that the letter offered is not signed by any officer of the United States.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, September 17, 1887, addressed to the secretary of the Southern Pacific Railroad Company and signed Edward Herrick, for the commissioner, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 85, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence a letter from the department of the interior, office of commissioner of railroads, dated Washington, D. C., April 2, 1888, addressed to the secretary of the Southern Pacific Railroad Company, signed by Edward Herrick, for the commissioner, acknowledging receipt of reports A and B for December 31, 1887, and ask that it be marked, "Defendants' Exhibit before the special examiner No. 86."

Same objection.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, April 2, 1888, addressed to the secretary of the Southern Pacific Railroad Company, signed by Edward Herrick, for the commissioner, is marked by the special examiner, "Defendants' Exhibit before the special examiner No. 86; Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence a letter from the department of the interior, office of commissioner of railroads, dated Washington, D. C., June 4, 1889, signed by Edward Herrick, in charge, addressed to the secretary of the Southern Pacific Railroad Company, acknowledging receipt of reports form A for the year ending December 31, 1888, and ask that it be marked "Defendants' Exhibit before the special examiner No. 87."

Same objection.

(Letter from the department of the interior, office of commissioner of railroads, Washington, D. C., June 4,

1889, addressed to the secretary of the Southern Pacific Railroad Company, signed by Edward Herrick in charge, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 87, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Q. Since the year 1889, to whom have the reports of the Southern Pacific Railroad Company to the interior department of the United States been acknowledged?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the act of Congress of July 27, 1866, and the act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic and Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same paries, as shown by the records of such decisions, which are in evidence herein; and upon the further

ground that it is not the best evidence of the matters sought to be adduced.)

A. Acknowledgment has been made to Mr. G. L. Lansing, secretary of the Southern Pacific Company in connection with an acknowledgment of a report of the Southern Pacific and the Central Pacific Railroad Companies; one acknowledgment has been made for the three reports.

Mr. REDDING.—Defendants give notice that they have made requests for certified copies of the reports on file in the interior department, and have asked the interior department to make these copies, and forward them at their earliest convenience to the special examiner in this case, Mr. Stephen Potter, to his address, San Francisco, or to the standing examiner, Mr. E. H. Lamme, Los Angeles, California; and that when the same are made and forwarded by the interior department, duly certified, that they will be offered in evidence by the defendants in this action.

Defendants offer in evidence the articles of consolidation and amalgamation, dated December 17, 1874, between the Southern Pacific Railroad Company and the Los Angeles and San Pedro Railroad Company, and ask that the special examiner make a certified copy of the articles in lieu of the original, and that the same be marked, "Defendants' Exhibit before the special examiner No. 88."

(Articles of association, amalgamation and consolidation of the Southern Pacific Railroad Company and the Los Angeles and San Pedro Railroad Company, dated

December 17, 1874, filed in the office of secretary of state, December 18, 1874, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 88, Stephen Potter, special examiner"; and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence articles of amalgamation and consolidation of the Southern Pacific Railroad Company with other railroad companies, dated May 4, 1888, and ask that the same be marked "Defendants' Exhibit before the special examiner No. 89," and that the special examiner certify to a printed copy of the same.

(Articles of association, incorporation, amalgamation, and consolidation of the Southern Pacific Railroad Company with the San Jose, and Almaden and sixteen other railroad companies, dated May 4, 1888, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 89, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Q. Will you state as secretary of the Southern Pacific Railroad Company whether the stock of the Southern Pacific Railroad Company was changed in these amalgamations and consolidations herein referred to, or whether it remained the same?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant, and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this

case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the act of Congress of July 27, 1866, and the act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions, which are in evidence herein; and upon the further ground that it is not the best evidence of the matters sought to be adduced.)

A. It remains the same.

Q. Has the business of the Southern Pacific Railroad Company since December 2, 1865, been transacted as one main corporation down to the present time?

(Same objection.)

A. It has.

Q. How long have you had charge of the books of this corporation?

(Same objection.)

A. Since October, 1870.

Q. Have you been its secretary ever since?

(Same objection.)

A. I have.

Q. Do you know whether or not the identity of the Southern Pacific Railroad Company as it existed at that time has been preserved down to the present time?

(Same objection.)

A. It has.

Q. Have the accounts of this company been kept continuously by you so far as your duties of secretary apply to the accounts and finances of this company?

(Same objection.)

A. I have.

Q. Do you know as a fact whether or not the Southern Pacific Railroad Company has forwarded to the interior department, to the secreary of the interior of the United States, to the auditor of railroad accounts of the United States, to the commissioner of railroads of the United States, full reports giving full answers to all requests and demands made upon the company by those several officers of the government?

(Same objection.)

A. Yes, sir, I do.

Q. Were these reports made under your supervision and by you as secretary?

(Same objection.)

A. Yes, sir.

Q. Do you know that the information therein set forth is authentic and correct excerpts from your books and from the business of the company?

(Same objection.)

A. Yes, sir.

Q. Did you compare them before they were sent in each instance and have them compared?

(Same objection.)

A. The matter was furnished by the heads of the different departments to me.

Q. Did you compare the information furnished with the reports as sent by you, or have it compared?

(Same objection.)

A. I had it compared.

Q. Did these reports contain from time to time the names of the stockholders of the Southern Pacific Railroad Company as they have existed for each year from the date of the first report down to the date of the last report?

(Same objection.)

A. I think that has been one of the requirements in every form of report which has been made.

Q. Do these reports also include the names of the directors in each year?

(Same objection.)

A. Yes, sir.

Q. The amount of the capital stock of the corporation from time to time?

(Same objection.)

A. Yes, sir.

Q. The complainant in the case at bar alleges in paragraph sixteen of his bill of complaint that the defendants D. O. Mills, and G. L. Lansing have a mortgage or deed of trust from the defendant, the Southern Pacific Railroad Company, covering the lands involved in this suit to secure the payment of certain indebtedness of said company to them as trustee, dated April 1, 1875; is there such a mortgage in existence?

(Same objection.)

A. There is. (Producing.)

Mr. REDDING.—Defendants offer in evidence the original trust mortgage of the Southern Pacific Railroad

Company to D. O. Mills and Lloyd Tevis, dated April 1, 1875, and ask that it be marked "Defendants' Exhibit before the special examiner No. 90," and with the usual understanding that a certified copy of the original may be substituted in lieu of the original.

Mr. CALL.—I have no objection to a certified copy being made in lieu of the original, subject to the same objections.

(Same objection.)

(Trust mortgage, Southern Pacific Railroad Company to D. O. Mills and Lloyd Tevis, trustees, dated April 1, 1875, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 90, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Q. Will you state from the books of the Southern Pacific Railroad Company what the amount of the bonds is that was issued under this mortgage?

(Same objection.)

A. $39,285,000, a portion of which has been redeemed.

Q. What is the amount outstanding at present?

(Same objection.)

A. $31,293,500.

Q. Are the bonds issued under this mortgage negotiable?

(Same objection.)

A. Yes, sir.

Q. Have they passed into the hands of third persons for value received?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant; and upon the further ground

that the Southern Pacific Railroad Company therein referred to is not the same corporation nor the same Southern Pacific Railroad Company defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the act of Congress of July 27, 1866, and the act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States and by the United States Circuit Court for the Southern District of California in a suit between the same parties, as shown by the records of such decisions, which are in evidence herein; and upon the further ground that it is not the best evidence of the matters sought to be adduced); and upon the further ground that the question calls for the opinion of the witness; and upon the further ground that the mortgage on its face discloses that it only purports to cover lands which were granted to the Southern Pacific Railroad Company; and upon the further ground that the alleged purchasers of such bonds are conclusively presumed to take notice of the terms of said mortgage and of the terms and conditions of the grant to said company by the acts of March 3, 1871, and July 27, 1866, and are also required to take notice of the records of the United States land office in the district where such lands

are situated, and the records of the general land office at Washington, all of which discloses that the Southern Pacific Railroad Company had no interest in or title to said lands.

A. They have.

(An adjournment was then taken by consent of counsel, until Monday, October 2, 1893, at 10 A. M.)

San Francisco, October 2, 1893.

Direct examination of J. L. WILCUTT (resumed).

Mr. CALL.—We do not dispute the proposition that the defendant railroad company made reports to the secretary of the interior, as required by law, and I will make the admission that the Southern Pacific Railroad Company organized and created by the articles of incorporation of 1865 and articles of consolidation of 1870, 1873, 1874, and 1888, respectively, and in evidence herein, marked "Master's Exhibits Nos. 1, 2, and 3, and Defendants' Exhibits before the special examiner Nos. 88 and 89," did in pursuance of written demands from the secretary of the interior make annual and semi-annual reports and other reports to the secretaryof the interiorof the United States, from the year 1870 down to and including 1893, and between the years 1878 and 1881, to the auditor of railroad accounts created under the act of Congress approved March 19, 1878, and commencing with 1881, and since that year to the commissioner of railroads created by general appropriation act approved March 3, 1881; and that those reports set forth the transactions, doings, and acts performed by defendant railroad company under the terms of the act of Congress of July 27, 1866, and

March 3, 1871, making grants to Southern Pacific Railroad Company; that said reports set forth the names of stockholders and boards of directors, amounts of capital stock and statement of all contracts, consolidations, and agreements entered into with other corporations, companies, and persons, and substantially as stated in the testimony of Joseph L. Wilcutt, given in this case on September 28, 1893, before special examiner in chancery Potter, and that such reports were received by the secretary of the interior, the auditor of railroad accounts, and commissioner of railroads of the United States, respectively, and were filed in the interior department; and the matters contained in such reports were duly reported by the auditor of railroad accounts and commissioner of railroads to the secretary of the interior, in their printed and published reports, as required by law. As no controversy is made in regard to this matter, and as I deem the matter entirely irrelevant and immaterial to the issues in this case, I have made a record of this admission in order to remove any excuse or ground for encumbering the record with documentary and other evidence to establish such facts, which, as I am informed, may amount to several thousand pages.

Mr. CALL.—In addition to the objections stated to the last question asked of the witness on September 30, I make the following additional objections to said question; the question is objected to as irrelevant, immaterial, and incompetent, and not the best evidence, and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company made by the act of Congress of March 3, 1871,

by the terms and conditions of said act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States and the United States Circuit Court for the Southern District of California as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company to which the grant was made by the act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked "Master's Exhibits 1, 2, and 3, and Defendants' Exhibit before the special examiner, Nos. 88 and 89," has surrendered to the United States all interests in these lands, and did thereby surrender to the United States in each case of consolidation all right to earn such lands by constructing a railroad, and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the interior department and of the United States land office at Los Angeles and the United States land office at San Francisco and the records of the office of the secretary of State of California and the public laws of the United States and of California show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.

Mr. CALL.—I will consent that certified copies may be made of all letters offered in evidence on September 30, 1893, which may stand in lieu of the originals, subject to the objections made to the originals, and that such copies be certified in the usual manner by the special examiner.

Mr. REDDING.—Q. Have all these bonds issued that are now outstanding prior to the year 1890, so far as your books show?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant, and not the best evidence, and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company made by the act of Congress of March 3, 1871, by the terms and conditions of said act and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company to which the grant was made by the act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked "Master's Exhibits 1, 2, and 3, and Defendants' Exhibits before the special examiner Nos. 88 and 89," has surrendered to the United States all interest in these

lands and did thereby surrender to the United States, in each case, of consolidation all right to earn such lands by constructing a railroad, and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, trustee, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the interior department and of the United States land office at Los Angeles and the United States land office at San Francisco, and the records of the office of the secretary of State for California and the public laws of the United States and of California show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.)

A. To the best of my recollection, without looking at my records.

Q. Have you ascertained from the records in this case and from the land department how much land is involved in this litigation?

(Same objection.)

A. Yes, sir.

Q. How many acres are there involved?

(Same objection.)

A. About 651,750 acres.

Q. From what sources have you obtained this information?

(Same objection.)

A. From the land department.

Q. How many acres of land so far as the grant of March 3, 1871, is concerned, are included in these two causes of the mortgage of 1875—marked "Defendants'

Exhibit before the special examiner No. 90," which reads as follows: "And, therefore, this indenture further witnesseth, that the said party of the first part for the purpose of securing a payment of the sums of money mentioned in said bonds and the interest thereon and in consideration of the premises, and also for and in consideration of the sum of one dollar to the said party of the first part in hand paid, by the parties of the second part, the receipt whereof is hereby acknowledged has granted, bargained, sold, released, enfeoffed, conveyed, confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey, and confirm unto the said parties of the second part as trustees and to their successors and survivors, and their assigns forever, all and singular the said several sections of land so as aforesaid granted by said acts of Congress; and also all estate, right, title, interest, claim and demand whatsoever at law or in equity of, in, or to the same or any part or parcel thereof, which the said party of the first part now has, holds, owns, or is entitled to or hereafter may or shall acquire, have, hold, own, or be or become entitled to by force or virtue of the said acts of Congress."

(Same objection.)

Mr. CALL.—I do not see that that describes any land.

Mr. REDDING.—That is a matter of opinion.

A. 4,400,000 acres.

Q. Then what is the proportion of the indebtedness secured by this mortgage which would be borne by the lands involved in this suit?

(Same objection.)

A. About one-sixth.

Q. Do the books of your company and do these mortgages show that the lands in controversy have been included as an asset for the payment of this mortgage?

(Same objection.)

A. They do.

Q. Do the representations made by the Southern Pacific Railroad Company to the purchasers and holders of these bonds and to the mortgagees under this mortgage show that the lands in controversy in this suit were included as a portion of the assets upon*n* which to pay the indebtednes created by this mortgage and these bonds?

(Same objection.)

A. Yes, sir.

Q. Have you as secretary of the Southern Pacific Railroad Company made these representations to the purchasers of these bonds?

(Same objection.)

A. I personally have had no negotiations with parties for the purchase of them.

Q. Do you know whether the Southern Pacific Railroad Company has made these representations.

(Same objection.)

A. It has.

Q. What has been done with the money received by the sale of these bonds, that is to say, so far as the Southern Pacific Railroad Company shows upon the books of the secretary, what application of these funds has been made?

(Same objection.)

A. Paying the indebtedness of the company in various ways.

Q. Does that include the payment for the work of construction?

(Same objection.)

A. The most of the construction has been paid for in bonds.

Q. Does your term "the indebtedness of the company" include all forms and kinds of indebtedness that the company is put to in the transaction of its business?

(Same objection.)

A. It does.

Q. Do you know that the Southern Pacific Railroad Company has received the money or its equivalent for the bonds issued and the bonds now outstanding?

(Same objection.)

Mr. CALL.—The witness has just stated that the bonds were issued for construction.

Mr. REDDING.—Yes, I understand that.

The WITNESS.—That is, a large portion of the bonds were; there have been some few that were sold for cash, but not to any great extent.

A. The Southern Pacific Railroad Company has not been interested in the proceeds of the bonds; the bonds were issued to the Pacific Improvement Company and the sales have been made by the Pacific Improvement Company; the larger portion of the bonds; so far as sales have been made by the company direct it has received the money for the sales of bonds which have been actually made by the company.

Mr. REDDING.—Defendants offer in evidence a certified copy of a deed of trust, dated August 25, 1888, between the Southern Pacific Railroad Company of the first part, the Southern Pacific Company of the second part, and Central Trust Company of New York of the third part, and ask that the same be marked "Defendants' Exhibit before the special examiner, No. 91" and that the special examiner make a certified copy of this certified copy in lieu of the one now offered in accordance with our stipulation upon these matters.

(Objected to by Mr. Call as incompetent, immaterial, and irrelevant, and not the best evidence, and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company made by the act of Congress of March 3, 1871, by the terms and conditions of said act and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company to which the grant was made by the act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked "Master's Exhibits 1, 2, and 3, and Defendants' Exhibits before the special examiner Nos. 88 and 89,"

has surrendered to the United States all interest in these lands and did thereby surrender to the United States, in each case, of consolidation all right to earn such lands by constructing a railroad, and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, trustee, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the interior department and of the United States land office at Los Angeles and the United States land office at San Francisco, and the records of the office of the secretary of State for California and the public laws of the United States and of California show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and upon the further ground that the pretended mortgage or deed of trust referred to does not purport to cover any of the lands in suit herein and upon the further ground that the said pretended mortgage or deed of trust is null and void and of no effect so far as it is pretended that it covers or includes any of the lands in suit herein, for that there is no description given of any lands, or any reference made to any other instrument for any such description, and upon the further ground that the Central Trust Company is a corporation, organized under the laws of the State of New York, as appears from said pretended deed of trust or mortgage, and is a nonresident of the State of California and of the Southern District of California, and is not a party defendant in this suit, and upon the further ground that said Central Trust Company has no interest in the subject matter of this suit.)

(Certified copy of deed of trust dated August 25, 1888, between the Southern Pacific Railroad Company of the first part, the Southern Pacific Company of the second part, and Central Trust Company of New York of the third part is marked by the special examiner, "Defendants' Exhibit before the special examiner, No. 91, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Q. State what your mortgage of 1888 as evidenced by the last exhibit purports to cover?

(Same objection.)

A. A first mortgage upon certain new lines as therein described, and a second mortgage upon the old lines and all the lands that have been granted to the company under its various land grants.

Q. Do you know whether or not as a matter of fact the intention of the Southern Pacific Railroad Company in executing this mortgage was to secure a second mortgage upon the land grant to it of March 3, 1871?

(Same objection.)

A. It was.

Q. What do you mean by a first mortgage upon new lines as distinguished from the old lines?

(Same objection.)

A. Lines that were not in existence at the time of the making of the mortgage of 1875. Lines which have since been laid out and built.

Q. From the books of the Southern Pacific Railroad Company, what do you ascertain to be the amount of outstanding bonds negotiated under this second mortgage of August, 1888?

(Same objection.)

A. $12,932,000.

Q. Is that the amount outstanding or the amount of issuance?

(Same objection.)

A. Both; there have been no redemptions.

Q. Referring to Exhibit No. 90, otherwise known as trust mortgage of 1875, will you state whether or not the Southern Pacific Railroad Company mentioned in the second line of the first page of said mortgage and mentioned throughout said mortgage and finally mentioned on page 8, in the following language: "In witness whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its president and secretary, and sealed with its corporate seal and the above parties of the second part do hereunto set their hands and seals the day and year first above written.

"CHARLES CROCKER,

"President Southern Pacific Railroad Company.

"J. L. WILLCUTT,

"Secretary Southern Pacific Railroad Company.

"[Corporate Seal S. P. R. R. Co.]"

is one of*n* the defendants in this action, the Southern Pacific Railroad Company?

(Same objection.)

A. Yes, sir.

Q. Is the J. L. Willcutt mentioned in this mortgage as the secretary of the Southern Pacific Company yourself?

(Same objection.)

A. Yes, sir.

Q. Did you execute that mortgage yourself?

(Same objection.)

A. Yes, sir.

Q. Is that your signature attached thereto?

(Same objection.)

A. Attached to the original, yes, sir.

Q. Did you sign your name at that time and place?

(Same objection.)

A. Yes, sir.

Q. And attached the corporate seal of the railroad company thereto?

(Same objection.)

A. Yes, sir.

Q. Referring to Defendants' Exhibit No. 91, is the Southern Pacific Railroad Company mentioned on the first and second lines of the first page and mentioned throughout said deed of trust and particularly mentioned on page 12 in the following langugae: "In witness whereof the said Southern Pacific Railroad Company, party of the first part has caused these presents to be signed in its name, by its president and attested by its secretary, and sealed with its corporate seal.

"SOUTHERN PACIFIC RAILROAD COMPANY,

"By Charles F. Crocker, President.

"Attest: J. L. Willcutt, Secretary.

"[Seal]"

the Southern Pacific Railroad Company, one of the defendants in this action?

(Same objection.)

A. It is.

Q. Is that your signature attached to the original deed of trust?

(Same objection.)

A. It is.

Q. Did you sign the same yourself?

(Same objection.)

A. I did.

Q. Did you attach the seal of the company at that time?

(Same objection.)

A. I did.

Q. And witness the execution of the deed of trust by the Southern Pacific Railroad Company?

(Same objection.)

A. I did.

Q. In reference to the deed of trust of 1888, is the same proportion of the entire land grant of the Southern Pacific Railroad Company under the grant of March 3, 1871, mortgaged and given as security as a second mortgage, as you stated, was given first to secure a mortgage in reference to the trust mortgage of 1875?

(Same objection.)

A. It bears the same proportion.

Q. Has the Southern Pacific Railroad Company represented to the purchasers of the bonds under this deed of trust of 1888, that the lands in controversy were a part of the security mortgage for the purpose of securing the payment of the indebtedness created by said deed of trust?

(Same objection.)

A. It has.

Q. Do the reports sent by the Southern Pacific Railroad Company to the various officers of the government herein mentioned include a statement of the execution of these various mortgages?

(Same objection.)

A. They do.

Q. What information, if at all, and in what manner has the Southern Pacific Railroad Company informed the various officers of the government of the existence of these mortgages, amounts thereof and the nature thereof?

(Same objection.)

A. In their various annual and semi-annual reports.

Q. Do those reports set forth in detail a true statement of the nature and extent of the Exhibits 90 and 91?

(Same objection.)

A. They do.

Q. Has the government been fully advised by the Southern Pacific Railroad Company of these mortgages and deeds of trust?

(Same objection.)

A. It has.

Q. And at the time they were created and issued?

(Same objection.)

A. Yes, sir; that is they are included in the first reports following the execution of the mortgages and deeds of trust.

Mr. REDDING.—That is all. I may recall Mr. Willcutt for the purpose of getting some testimony from his department in connection with the treasury department, but this is my direct testimony from him at the present time.

Cross-Examination.

Mr. CALL.—Q. When you stated that you understood that the Southern Pacific Railroad Company which is defendant in this suit, was the same corporation that the grant was made to, by the act of Congress of March 3, 1871, did you have in mind the consolidations made by the original Southern Pacific Railroad Company in 1870, 1873, 1874, 1888?

(Question objected to by Mr. Redding as immaterial and irrelevant; it is immaterial for the reason that Congress made a grant of lands to the Southern Pacific Railroad Company in 1866, on July 27th of that year; that in 1870, the Southern Pacific Railroad Company entered ino articles of amalgamation and consolidation which are introduced by the government in this case and marked Examiner's Exhibit No. 3, and in 1871 on March third of that year, the government of the United States, by its Congress, made a second grant to the Southern Pacific Railroad Company which is the grant in controversy. That this latter grant known as the branch line grant was made subsequent to the amalgamation and consolidation last referred to, and that Congress, at the time of making this latter grant, namely, of March 3, 1871, had full knowledge of the said amalgamation and consolidation and full knowledge of the method of the Southern Pacific Railroad Company in entering into the articles of amalgamation and consolidation of 1870, heretofore referred to and introduced by the government in this case and marked Examiner's Exhibit No. 3; that the articles of amlagamation and consolidation of the Southern Pacific Railroad

Company subsequent to March 3, 1871, and subsequent to the said articles of amalgamation and consolidation of 1870 are identical in terms and conditions and procedure and with which the said government of the United States, the complainant, in this suit were informed and familiar; that therefore the complainant in this action is estopped from denying the validity of the articles of consolidation and amalgamation entered into between the Southern Pacific Railroad Company and other railroad companies as herein set forthand introduced; that the governmentof the United States, the complainant herein, has recognized the Southern Pacific Railroad Company as it has existed from December, 1865, the date of its incorporation, down to and including the present time and particularly the commencement of this suit, and has been fully informed of every contract, article, or articles, and all acts of said Southern Pacific Railroad Company entered into of all kinds and nature and has approved the same and endorsed the same, and furthermore the act of Congress of July 27, 1866, making the main line grant and the act of Congress of March 3, 1871, making the branch line grant from a point at or near Tehachapi Pass by the way of Los Angeles to a point on the Colorado river near Fort Yuma which latter grant is the one in controversy, was made in direct terms to the Southern Pacific Railroad Company, its successors or assigns; that for the above reasons the question is immaterial and irrelevant.)

A. Yes, sir.

Q. Then I infer from your answer that your view is that the Southern Pacific Railroad Company organized

in 1865, still exists, notwithstanding the consolidations referred to?

(Same objection.)

A. That is my understanding and my view of it.

Q. And it is then your view that it is the same corporation and same individuality that was organized in 1865?

(Same objection.)

A. It has been treated as such throughout in our relations with the government in our accounts and in our entire business.

Q. I assume from your answers that you are familiar with the terms and conditions of the consolidation referred to?

(Same objection.)

A. Yes, sir.

Q. You are then probably familiar in point of fact with the laws of this State in reference to consolidations and the effect of such consolidations?

(Same objection.)

A. I am.

Q. Do your records in your possession show the proceedings of the stockholders and board of directors of the consolidating companies in reference to such consolidations?

(Same objection.)

A. They do.

Mr. CALL.—I will ask you to produce the record containing the proceedings upon consolidation, commencing in 1873 and including that of 1874.

(Same objection.)

The WITNESS.—I might ask, if you wish the minutes of the Southern Pacific Railroad Company only, or that of the various roads consolidated with the Southern Pacific Railroad Company?

Mr. CALL.—Q. Commencing with the consolidation of 1873, did you keep separate records prior to that time for the Southern Pacific Railroad Company and the Southern Pacific Branch Railroad Company?

(Same objection.)

A. Yes, sir.

Q. And after that date, did you keep a record of the Southern Pacific Branch Railroad Company?

(Same objection.)

A. None whatever.

Q. And in the consolidation of 1874, did you keep a record of those amalgamating and consolidating companies up to the time of consolidation separately?

(Same objection.)

A. Yes, sir.

Q. And after that date did you keep any records of any of the companies other than a record of the Southern Pacific Railroad Company?

(Same objection.)

A. No, sir.

Mr. CALL.—I ask you to produce the record of the Southern Pacific Railroad Company commencing with 1873 and including the year 1874.

(Same objection.)

A recess was then taken by consent of counsel until 2 P. M.

San Francisco, Oct. 2, 1893, 2 P. M.

Cross-examination of J. L. Willcutt (resumed).

Mr. CALL.—Q. Have you produced the record requested?

A. Yes, sir. (Producing.)

Q. When you were referring to the Southern Pacific Railroad Company organized in 1865, being the same corporation that is defendant here, during all that time did you have in mind the records of your company in reference tothe construction of the railroad from Tehachapa by way of Los Angeles to the Colorado river, as to what corporation instructed that road?

(Same objection.)

A. Yes, sir.

Q. Did you consider that the Southern Pacific Railroad Company organized in 1865, constructed that railroad?

(Same objection.)

A. Yes, sir.

Q. Do the records of your office show what was done in that respect, and what corporation did it?

(Same objection.)

A. There is but one corporation shown herein my records.

Q. Do the records show what was done and how it was done?

(Same objection.)

A. Yes, sir.

Mr. REDDING.—Mr. Call, I understand that where the words "same objection" are used, it is the equivalent of repeating in full the last stated objection?

Mr. CALL.—I understand that that is understood all during the trial of this case before the special examiner.

Q. Do the records of your office show as to the manner of constructing the railroad from Tehachapa by way of Los Angeles to the Colorado river, that is, as to how the contract work was let and when it was approved?

(Same objection.)

A. Yes, sir.

Q. Will you please produce the record showing those matters referred to, or is it all contained in this book?

(Same objection.)

A. It is contained in this book.

Q. Referring to the construction of the railroad from Tehachapa by way of Los Angeles to Colorado river, was that road constructed direct by the Southern Pacific Railroad Company, or was it by contract with the Pacific Improvement Company, or some other company?

(Same objection.)

A. Under contract with another company.

Q. What company?

(Same objection.)

A. I find that it was The Pacific Improvement Company.

Q. Was the Pacific Improvement Company paid for constructing that railroad in cash or in bonds and stock?

(Same objection.)

A. In bonds and stock.

Q. How much did they receive per mile?

(Same objection.)

A. $25,000 per mile in bonds and $30,000 per mile in stock?

Q. Altogether?

(Same objection.)

A. $55,000 per mile.

Q. At the par value of the stock and bonds?

(Same objection.)

A. Yes, sir.

Q. How many miles is it from Mojave by way of Los Angeles to the Colorado river at Yuma?

(Same objection.)

A. 242 507-1000 miles.

Q. These stocks and bonds were stocks and bonds of the Southern Pacific Railroad Company, were they?

(Same objection.)

A. Yes, sir.

Q. Making altogether how much in bonds for the building of that line?

(Same objection.)

A. $6,062,500, or thereabouts in bonds.

Q. Were bonds also issued to the Pacific Improvement Company for constructing the other branch lines of road mentioned in the mortgage to D. O. Mills and Lloyd Tevis?

(Same objection.)

A. Yes, sir. bonds were issued under different contracts, either with the Pacific Improvement Company, the Western Development Company, or the Contract and Finance Company; there were contracts with all of those companies.

Q. One of those three companies built all the roads, taking their pay in bonds and stock?

(Same objection.)

A. Yes, sir.

Mr. CALL.—From the record produced by the witness, marked on the back "Record Southern Pacific R. R. Co., A" I offer the following parts of the record referred to:

Pages 117 to 132, inclusive, excepting the duplicate copy of articles as proposed and as adopted, which will be omitted.

(Same objection.)

Mr. CALL.—By consent, in lieu of copying the articles of consolidation of 1873, as they appear in the original record, as now being offered, it is agreed that the articles of consolidation of that date heretofore offered, and marked Exhibit ——, shall stand in lieu thereof. Is that satisfactory to you?

Mr. REDDING.—That is satisfactory to me, with the same objection to its competency, relevancy, and materiality.

Mr. CALL.—I also offer in evidence pages 136 and 137.

(Same objection.)

Also pages 145, 146.

(Same objection.)

Mr. CALL.—Also page 147.

(Same objection.)

Mr. CALL.—I also offer in evidence page 148.

(Same objection.)

Mr. CALL.—Also pages 151, 152, 153, 154, 155, 156, 157, and 158, omitting the articles of consolidation of 1874.

(Same objection.)

Mr. CALL.—Mr. Redding, is it admitted that the articles of 1874 marked "Master's Exhibit ——," shall stand

in lieu of the excerpt from the record, without the necessity of copying again the articles set forth herein?

Mr. REDDING.—Yes, sir, subject to the same objections heretofore made.

Mr. CALL.—I also offer pages 159, 160, 161, and 162 to 166 inclusive.

(Same objection.)

Mr. CALL.—Also pages 196 to 202, inclusive.

(Same objection.)

Mr. CALL.—Also pages 215 to 219, inclusive.

(Same objection.)

Mr. CALL.—Also the heading of the meeting at page 220, and the matter contained on page 222.

(Same objection.)

Mr. CALL.—Also the heading of the meeting commencing at page 230, and omitting from there to page 231, commencing on page 231 with the following language: "The following preamble and resolutions," the balance of page 231, 232, and the first line on 233, and the signature of the secretary on page 234.

(Same objection.)

Mr. CALL.—Also page 245, and the first seven lines on page 246, and that part of 247 commencing with the words: "The following resolution was offered," and ending at the bottom of said page.

(Same objection.)

Mr. CALL.—Also page 259, 260, 261, 262, 263, 276, and that part of 277 ending with the words "a proper receipt therefor" near the bottom of page 287, page 288, 289, 290, excepting the letter pasted on that page, the first two lines of 291, 292.

(Same objection.)

Mr. CALL.—Also pages 301 to 304, inclusive.

(Same objection.)

Mr. CALL.—Also pages 309, to 311, inclusive, 312, and 313.

(Same objection.)

Mr. CALL.—The heading at page 457, and then omit down to the seventh line from the bottom on page 458, and including the last six lines on page 458, page 459, the heading of the meeting on page 460, and the first resolution on 462, omitting what occurs between.

(Same objection.)

Mr. CALL.—Also page 474, and ending on page 475.

(Same objection.)

Mr. CALL.—The heading on page 476, and that part of page 479, commencing with the words "the following resolution was offered," and ending with "J. L. Willcutt, Secretary."

(Same objection.)

Mr. CALL.—The heading on page 480, and that part of 481 commencing with the words, "the following resolution was offered by Charles Mayne," and ending with the the words, "taking a proper voucher therefor," and comprising seventeen lines.

(Same objection.)

Mr. CALL.—Also the heading of the meeting on page 486, omitting until the following words are reached on page 490, "the following resolution was offered by Charles Mayne," and including the balance of 490, excepting the last three lines; also the signature of J. L. Willcutt, secretary on page 491.

(Same objection.)

Mr. CALL.—Also the heading on page 492, and the last half of page 493, commencing with the words "the following resolution was offered," and ending with the first three lines of page 494.

(Same objection.)

Mr. CALL.—Also the heading of page 495 and the first resolution on page 497, taking half of the page.

(Same objection.)

Mr. CALL.—Also the heading of the meeting on page 500, and the resolution contained on the bottom half of page 501, and ending on page 502.

(Same objection.)

Mr. CALL.—Also the heading on page 503, and the last half of page 504 commencing with the words, "the following resolution was offered," and ending with the first three lines on page 505, also the signature of the secretary on the same page.

(Same objection.)

Mr. CALL.—The heading of 504 and the resolution at bottom of page 515, commencing with the words "on motion of N. T. Smith," and ending on page 516 with the words "on open account," also the signature of the secretary on page 518.

(Same objection.)

Mr. CALL.—I will ask the special examiner to make copies of this portion of this record which I have offered, and to file it in evidence in the case as exhibit before the special Examiner L; and would it be satisfactory for him to do so, to be taken with the same effect as the original, subject to the same objection?

Mr. REDDING.—Yes, sir; satisfactory, provided it is understood that my objection runs to each excerpt taken throughout the entire series of pages on the ground of incompetency, immateriality, and irrelevancy, as heretofore set forth.

Mr. CALL.—Q. Referring to your testimony on direct examination that representations were made by the Southern Pacific Railroad Company to purchasers of bonds, or proposed purchasers of bonds, that the company represented to such purchasers that the mortgage of 1875 to Mills and Tevis, trustees, covered the lands in suit, I ask you to state how such representations were made and by whom?

A. The mortgage, I understand, covers all those lands, and from information which I have been called upon to furnish the New York office from time to time, I assume those representations were made to the purchasers of the bonds.

Q. Did you personally make such representations yourself? A. No, sir.

Q. Were such representations made in your presence by any authorized officer of the company to any proposed purchaser? A. No, sir.

Q. In assuming that the mortgage covered the lands in suit, are you familiar with the terms and conditions of the mortgage?

The WITNESS.—As expressed therein?

Mr. CALL.—Q. You are aware that the mortgage states in substance that it covers lands granted to the Southern Pacific Railroad Company, are you not?

(Question objected to by Mr. Redding as being mislead-

ing, and not the best evidence; the mortgage itself sets forth what it pretends to cover in the shape of security.)

Mr. CALL.—I want to get the source of information of the witness? A. Yes, sir.

Mr. CALL.—And you are then aware that the mortgage does not describe any particular tracts of lands in terms?

A. There are no particular tracts described, but reference is made on page 1 of the mortgage to the fact that the Southern Pacific Railroad Company is about to issue its first mortgage bonds for the said railroad and telegraph line, and its rolling stock, fixtures, and franchises, and also upon the lands granted to it by Congress by the act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved July 27, 1866, and the act entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road and for other purposes," approved March 3, 1871, not sold or otherwise disposed of prior to the execution of this mortgage, and upon page 6 the expression that this mortgage covers "all and singular the said several sections of land so as aforesaid granted by said acts of Congress; and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity of, in, or to the same, or any part or parcel thereof, which the said party of the first part now has, holds, owns, or is entitled to, or hereafter may or shall acquire, have, hold, own, or be or become entitled to by force or virtue of the said acts of Congress; saving, excepting, and reserving all parts and parcels of

said lands which have been sold or contracted to be sold or disposed of heretofore, or which are or shall be included in the right of way of the said railroads and telegraph lines of the said company, as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings, or erections thereon."

Q. Are you familiar with the terms and conditions of the acts of Congress therein referred to?

(Question objected to by Mr. Redding as immaterial, irrelevant, and incompetent, and calling for the opinion of the witness.)

A. Only in a general way.

Q. When you stated that you assumed that the mortgage covered lands in suit, did you or did you not assume that the lands were covered by the grants or acts of Congress referred to?

A. I assumed that they were; I understood that they were.

Q. Were you aware that the Acts of Congress referred to did not grant to the Southern Pacific Railroad Company lands which had been previously granted and also lands which had been reserved for any purpose?

(Same objection.)

A. Yes, sir.

Q. Has there been any consolidation of the Southern Pacific Railroad Company with other railroad companies since that made in 1888?

A. No, sir.

Re-direct Examination.

Mr. REDDING. Have you obtained from Mr. Lansing the letter of acknowledgment from the office of commissioner of railroads showing the receipt by the department of the interior of the reports of the Southern Pacific Railroad Company for the years of 1889, 1890, 1891, 1892, and 1893?

A. I have.

Mr. REDDING.—Defendants offer in evidence letters from the department of the interior, office of commissioner of railroads, addressed to G. L. Lansing, Esq., secretary and controller Southern Pacific Company, dated respectively, October 24, 1889, October 21, 1890, October 21, 1891, September 28, 1892, and September 16, 1893, and ask that they be marked "Defendants' Exhibits before the special examiner Nos. 92, 93, 94, 95, and 96."

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, October 24, 1889, signed W. M. Thompson, in charge of office, addressed to G. L. Lansing, Esq., controller Southern Pacific Company, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 92, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

(Letter from the department of the interior, office of commissioner of railroads, dated October 21, 1890, signed W. M. Thompson, in charge of office, addressed to G. L. Lansing, Esq., secretary and controller, Southern Pacific Company, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 93, Stephen Pot-

ter, special examiner," and a certified copy thereof is attached hereto.)

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, October 21, 1891, signed W. M. Thompson, bookkeeper, addressed to G. L. Lansing, Esq., secretary and controller, Southern Pacific Company, is marked by the special examiner "Defendants' Exhibit before the special examiner No. 94, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, September 28, 1892, signed W. M. Thompson, bookkeeper, addressed to G. L. Lansing, Esq., secretary and controller, Southern Pacific Company, is marked by the special examiner, "Defendants' Exhibit before the special examiner No. 95, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.

(Letter from the department of the interior, office of commissioner of railroads, dated Washington, September 16, 1893, signed F. E. Storm, bookkeeper, addressed to G. L. Lansing, Esq., secretary and controller Southern Pacific Company, is marked by the special examiner, "Defendants' Exhibit before the special examiner No. 96, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

J. L. WILLCUTT.

(An adjournment was then taken by consent of counsel until Tuesday, October 3, 1893, at 1 P. M.)

Defendants' Exhibit No. 65.—Letter.

(Before the Special Examiner.)

Department of the Interior.

Washington, D. C., April 3, 1871.

Sir:

The map received with your letter of the twenty-second ultimo, showing the route of the Southern Pacific Railroad "from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river," has been sent to the commissioner of the general land office, with directions to withdraw the lands as provided in the twelfth section of the act to incorporate said Texas Pacific Railroad, approved March 3, 1871.

Very respectfully,

Your obedient servant,

WALTER H. SMITH,

Acting Secretary.

Charles Crocker, Esq.,

President Southern Pacific Railroad Company.

54 William Street, New York.

[Endorsed]: Walter H. Smith, Acting Secretary, Washington, April 3, 1871.

Map sent to commissioner with direction to withdraw certain lands.

(Marked "Defendants' Exhibit before the Special Examiner No. 65, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 66.—Letter.

(Before the Special Examiner.)

Pac. R. R.

Department of the Interior.

Washington, D. C., August 5, 1868.

Sir:

I invite your attention to an act entitled "An act relative to filing reports of railroad companies," approved June 25, 1868.

It will be perceived that the reports required by the act of July 1, 1862, and the acts amendatory thereof, to be made to the secretary of the Treasury, are hereafter to be made to the secretary of the interior "on or before the first day of October of each year."

Very respectfully,

Your obedient servant,

O. H. BROWNING,

Secretary.

President of the

Southern Pacific Railroad Company,

San Francisco, Cal.

(Enclosure.)

(Public—No. 51.)

An act relative to filing reports of railroad companies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assem-

bled, That the reports required to be made to the secretary of the Treasury on or before the first day of July of each year, by the corporations created by or entitled to subsidies under the provisions of an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the government the use of the same for postal, military and other purposes," approved July first, eighteen hundred and sixty-two, and the acts supplemental to and amendatory thereof, shall hereafter be made to the secretary of the interior, on or before the first day of October of each year. Said reports shall furnish full and specific information upon the several points mentioned in the twentieth section of the said act of eighteen hundred and sixty-two and shall be verified as therein prescribed, and on failure to make the same as herein required, the issue of bonds or patents to the company in default shall be suspended until the requirements of this act shall be complied with by such company. And the reports hitherto made to the secretary of the treasury under the said act of July first, eighteen hundred and sixty-two, shall be transferred and delivered by him to the secretary of the interior to be filed by him.

Sec. 2. And be it further enacted, That the corporations created by the provisions of the acts of Congress approved July second, eighteen hundred and sixty-four and July twenty-seventh, eighteen hundred and seventy-six, and known as the Northern Pacific Railroad Company, the Atlantic & Pacific Railroad Company, and the Southern Pacific Railroad Company, shall make reports to the

secretary of the interior on or before the first of October of each year, as are required to be made by the Union Pacific Railroad and branches, under the provisions of the first section of this act, and on failure to do so, shall be subject to the like suspension.

Sec. 3. And be it further enacted, that the reports required from the commissioners appointed to examine and report in relation to the road of any of the corporations whereto reference is made in this act, shall be addressed to and filed in the department of the interior; and all such reports heretofore made shall be transferred to and filed in said department of the interior; and so much of any and all acts as requires any reports from such companies, or any officers thereof, to be made to the secretary of the treasury, is hereby repealed.

Sec. 4. And be it further enacted, that, in addition to the eight subjects referred to, in section twenty of the act of July, eighteen hundred and sixty-two, to be reported upon, there shall also be furnished annually to the secretary of the interior all reports of engineers, superintendents, or other officers who make annually reports to any of said railroad companies.

Approved June 25, 1868.

U. S. Statutes, chapter LXXVII, page 69.

Chapter CXX.

page 498.

Sec. 20.

(Marked "Defendants' Exhibit before the special examiner, No. 66, Stephen Potter, special examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, clerk.

Defendants' Exhibit No. 67.—Letter.

(Before the Special Examiner.)

Pac. R. R.

Department of the Interior.
Washington, D. C., September 26, 1868.

Sir:

Please furnish the secretary of the interior before the fifteenth proximo, a report of the progress and condition of your road to be used in the preparation of his annual report to the President.

Very respectfully,
Your obedient servant,
W. T. OTTO,
Acting Secretary.

T. G. Phelps, Esq.,
Pres. Southern Pac. R. R. Co.,
San Mateo, California.

(Marked "Defendants' Exhibit before the special examiner, No. 67, Stephen Potter, special examiner.")

I hereby certify that I have compared the foregoing in-

strument with the original, and find it to be a full, true, and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

Ex. No. 67.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 68.—Letter.

(Before the Special Examiner.)

Pac L gt. R. R.

Department of the Interior.

Washington, D. C., August 31, 1870.

Sir:

The act approved June 25, 1868, requires the annual report of your company to be filed in this department on or before the first day of October of each year.

It is desired to have the reports of the different companies brought up to the same date, the thirtieth of June, the end of the fiscal year.

You are requested to have the report of your company for the past year brought up to that date, and filed on or before the first of October next.

Very respectfully,
Your obedient servant,

J. D. COX,
Secretary.

Lloyd Tevis, Esq.,
Pres. Southern Pac. R. R. Co.
San Francisco, Cal.

(Marked "Defendants' Exhibit before the special examiner, No. 68, Stephen Potter, special examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, September 30, 1893.

Ex. No. 68.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 69.—Letter.

(Before the Special Examiner.)

Z. B. S.

Department of the Interior.

Office of the Secretary,

Washington, D. C., 1st Sept., 1876.

Sir:

I enclose herewith a printed circular, issued by this department twenty-sixth October, 1872, concerning the annual reports of railroad companies, which the law requires to be filed in this department.

I desire, that in making up the annual report of your company, you will see that it conforms in every respect to the requirements of this circular, and that it be furnished to the department on or before the first proximo.

Very respectfully,

Z. CHANDLER,

Secretary.

Chas. Crocker, Esq.,
Pres. Southern Pacific R. R. Co.,
9 Nassau St., New York.

[Endorsed]: Hon. Z. Chandler, secretary of the interior to Chas. Crocker, President Southern Pacific Railroad Company.—Annual report of company to secretary of interior. (Enclosure.)

Department of the Interior.
Washington, D. C., October 26, 1872.

Gentlemen:

The following named railroad companies are required by the twentieth section of the act of first of July, 1862 (12 Statutes, 498), to make annual reports to the secretary of the interior under certain specified heads: The Union Pacific, Central Pacific, Western Pacific (now consolidated with Central Pacific), Central Branch Union Pacific, Denver Pacific, Sioux City and Pacific, and Kansas Pacific, and the act of twenty-fifth of June, 1868 (15 Statutes, 79), requires such reports from the Northern Pacific, Southern Pacific, and the Atlantic & Pacific Railroad Companies.

These reports are required by said twentieth section to show—

"First. The names of the stockholders and their places of residence, so far as the same can be ascertained;

"Second. The names and residences of the directors, and all other officers of the company;

"Third. The amount of stock subscribed, and the amount thereof actually paid in;

"Fourth. A description of the lines of road surveyed, of the lines thereof fixed upon for the construction of the road, and the cost of such surveys;

"Fifth. The amount received from passengers on the road;

"Sixth. The amount received for freight thereon;

"Seventh. A statement of the expense of said road and its fixtures; total and annual.

"Eighth. A statement of the indebtedness of said company, setting forth the various kinds thereof.

"Which report will be sworn to by the President of said company."

There is also required from the Atlantic & Pacific Company, by the thirteenth section of the act of twenty-seventh of July, 1866 (14 Statutes, 297), "An annual report of their proceedings and expenditures, verified by the affidavits of the president and at least six of the directors, a copy of which shall be deposited in the office of (the) secretary of the interior." The fourth section of the act of twenty-fifth June, 1868 (15 Statutes, 79), also requires "that, in addition to the eight subjects referred to in section twenty of the act of July, eighteen hundred and sixty-two, to be reported upon, there shall also be furnished annually to the secretary of the interior all reports of engineers, superintendents or other officers who make annual reports to any of said railroad companies." The first section of the said act of twenty-fifth June, 1868, requires the reports of the above-mentioned companies "to be made to the secretary of the interior on or before the first day of October of each year," and that they "shall

furnish full and specific information upon the several points mentioned in the twentieth section of the said act of 1862, and shall be verified as therein prescribed, and on failure to make the same as herein required, the issue of bonds or patents to the company in default shall be suspended until the requirement of this act shall be complied with by such company." The thirteenth section of the act of third of March, 1871 (16 Statutes, 577), requires a sworn report to be made by the Texas & Pacific Railroad Company to the secretary of the interior "by the first day of July" of each year. Said section requires this report to exhibit "the financial situation of the company, the amount of money received and expended, and the number of miles of road constructed each year; and further the names and residences of the stockholders, of the directors, and of all other officers of the company; the amount of stock subscribed, and the amount thereof actually paid in, a description of the lines of road surveyed and fixed upon for construction, the amount received from passengers and for freight, respectively, on the road, a statement of the expenses of said road and its fixtures, and a true statement of the indebtedness of said company, and the various kinds thereof."

The number of shares of stock held by each director should be given.

B. R. COWEN,
Acting Secretary.

To Presidents of Railroad Companies:

If no such reports are made to the company it should be so stated in your report.

[Endorsed]: Requirements by department of the interior. September 1, 1876.

(Marked "Defendants' Exhibit before the special examiner, No. 69, Stephen Potter, special examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 70.—Thirty-seven Letters.

(Before the Special Examiner.)

First Letter.

Requirements from Department of the Interior.

Office of Auditor of Railroad Accounts,
Washington, D. C., July 13, 1878.

Sir:

I have the honor to transmit herewith a copy of the act of Congress entitled "An act to create an auditor of railroad accounts, and for other purposes," approved June 19, 1878, and to call your attention to the requirements of the same.

Under the provisions of this act, I hereby respectfully request that you direct the secretary of your company to furnish this office, by return mail, with the name and residences of all the officers and directors of the company,

as of date July 1, 1878, and with the business address of the company.

I have further to request that you direct all the officers of your company, in compliance with the requirements of law, to render to this office all information and reports that I may require from time to time, to submit the books and records of the company to my inspection, or that of any person acting in my place or stead, and to furnish transportation over your road for myself or any person acting under my direction, without expense to the United States.

I will thank you also for copies of the full series of your printed reports to stockholders, including that for last year.

I have the honor further to request that this office be furnished, by return mail, or as soon thereafter as possible with copies of all schedules of "through" and "way" passenger and freight tariffs, or rates in force on the first instant, and of such others as have been in force during the year ending June 30, 1878, also of all joint schedules of passenger and freight tariffs agreed upon between your company and other railroad companies, and in force during the same periods; and of all contracts for special rates that have been made by your company with any person, firm, or corporation during the same period.

Very respectfully,

THEO'S FRENCH,

Auditor.

Charles Crocker, Esq.,

President Southern Pacific Railroad Company,

San Francisco, Cal.

Second Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts,
Washington, D. C., July 22, 1878.

Sir:

Thirty blanks of form No. 1, issued by this office, have been forwarded to you by this mail.

I will thank you to have the same filled up to show the condition of the general ledger of your company at the periods following, viz:

First. On June 30, 1877, after the transfer of balances to "Income Account" or "Profit and Loss" account.

Second. On December 31, 1877, before transfer of balances to "Income Account," if such transfers are made semi-annually.

Third. On June 30, 1878, before transfer of balances to "Income Account."

Fourth. On July 1, 1878, after the transfers, but before any new entries have been made.

Fifth. On July 31, August 31, &c., 1878, monthly hereafter.

The columns without headings are not to be written upon, as they are intended for use in this office.

Very respectfully,

THEOS. FRENCH,
Auditor.

Charles Crocker, Esq., Prest. Southern Pac. R. R. Co.,
San Francisco, Cal.

Third Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts,
Washington, D. C., July 26, 1878.

Sir:

I have the honor to request that this office be furnished, as early as possible, with copies of all contracts or agreements made by your company with any telegraph company, sleeping car company, express company, or fast freight line or transportation company, and which are still in force.

Very respectfully,

THEO'S FRENCH,
Auditor.

Charles Crocker, Esq.,
Pres. Southern Pacific R. R. Co.,
San Francisco, Cal.

Fourth Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts,
Washington, D. C., July 29, 1878.

Sir:

I have the honor to request that this office be furnished, by return mail, with a copy of your by-laws as now in force and a list of committees, as at present composed.

Very respectfully,

THEOS. FRENCH,
Auditor.

Charles Crocker, Esq., Prest.,
Southern Pacific R. R. Co.,
San Francisco, Cal.

Fifth Letter.

Department of the Interior.

Office of Auditor of Railroad Accounts,

Sir: **Washington, D. C., August 1, 1878.**

I have the honor to refer you to my letters dated respectively July 13, 22, 24, 26 and 29, 1878, to none of which have I received a reply to this date, and to enclose again copy of the act of Congress, No. 121, approved June 19, 1878.

By this mail 50 blanks of form No. 2 of this office have been forwarded to you, upon which I will thank you to direct the auditor or other proper officer of your company to make reports for six months, respectively ending June 30, 1877, December 31, 1877, and June 30, 1878, by divisions as separated in your accounts, and by the same divisions monthly hereafter, commencing with July 31, 1878.

In this connection, I have further to state that, as one month has already elapsed without compliance on the part of your company with the requirements of this office made in pursuance of and under the law, I hereby respectfully give notice that, unless compliance with each and every requirement heretofore and hereby again requested, is made within 30 (thirty) days from this date, proceedings will be commenced to collect the penalties under section 5 of the act, approved June 19, 1878.

Very respectfully,

THEOS. FRENCH,

Charles Crocker, Esq., **Auditor.**

President of the Southern Pacific R. R. Co.

San Francisco, Cal.

Sixth Letter.

Department of the Interior.

Office of Auditor of Railroad Accounts.

Washington, D. C., August 27, 1878.

Sir:

By this mail 50 blanks of form No. 4 have been forwarded to you, upon which I will thank you to direct the auditor or other proper officer of your company to make reports for the periods of six months respectively ending June 30, 1877, December 31, 1877, and June 30, 1878, by divisions as separated in your accounts, and by the same divisions monthly thereafter, commencing with July 31, 1878.

This information is desired specifically as requested, if the method of keeping your accounts will so permit; if not, as near thereto as possible.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq.?,

President Southern Pac. R. R. Co.,

San Francisco, Cal.

Seventh Letter.

Department of the Interior.

Office of Auditor of Railroad Accounts.

Washington, D. C., September 3, 1878.

Sir:

I have the honor to inform you that to-day I have mailed to your address, 5 blanks, sheet 1,

5 blanks, sheet 2,
and 20 blanks, sheet 3,

all of form No. 3, issued by this office, and to request, that report for June 30, 1878, be made upon these forms to this office at as early a day as possible; and hereafter, on the thirtieth of September, thirty-first of December, etc., quarterly, excepting that required on sheet No. 3, which need only be made at such times as the transfer books of the company are closed prior to an election by or vote of stockholders, or prior to the payment of a dividend.

Very respectfully,

THEOS. FRENCH,
Auditor.

Chas. Crocker, Esq.,
Pres't Southern Pacific R. R. Co.,
San Francisco, Cal.

P. S.—If at the end of a quarter, no change has occurred on sheets 1 and 2 since the previous report, notification of that fact will be sufficient.

Eighth Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., September 9, 1878.

Sir:

Referring to my letter of the twenty-seventh ultimo, at which time blanks of form No. 4 were forwarded, I will thank you to have the reports made on one-half of the

sheets to show northward traffic and on the other half to show southward traffic, if it is possible to so do.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq.,
Pres't Southern Pacific R. R. Co.,
San Francisco, Cal.

Ninth Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., September 20, 1878.

Sir:

Forty blamks of each sheet, Nos. 1, 2, 3, and 4 of Form No. 5 of this office, have been forwarded to you by this mail.

I have to request that report be made upon them for the periods following, viz:

1st six months ending June 30, 1877.

2nd six months ending December 31, 1877.

3d six months ending June 30, 1878, and a monthly report thereafter, commencing with that for July 31, 1878.

As in Form No. 2 of this office, it is requested that these reports be made by divisions as separated in your accounts, and in addition thereto, for each branch and leased road separately.

If the method of keeping your accounts will permit this information to be furnished specifically as requested, it

is so desired, but if not then as near thereto as possible.

Very respectfully,

THEOPHILUS FRENCH,

Auditor.

S. G.

Charles Crocker, Esq.,
President Southern Pacific R. R. Co.,
San Francisco, Cal.

Tenth Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., September 27, 1878.

Sir:

The blanks of Form No. 6, issued by this office, are herewith enclosed.

I have to request that reports on these blanks be forwarded to this office for the period following, viz:

1. For the six months ending June 30, 1877;
2. For the six months ending December 31, 1877;
3. For the six months ending June 30, 1878—and monthly thereafter, on July 31, August 31, and so forth.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq.,
Pres't Southern Pacific R. R. Co.
San Francisco, Cal.

Eleventh Letter.

Department of the Interior.

Office of Auditor of Railroad Accounts.

Washington, D. C., October 1, 1878.

Sir:

Six blanks of Form No. 7, issued by this office, are herewith enclosed.

I have to request that reports be made upon this form for the periods following, viz:

1. For the six months ending June 30, 1877;
2. For the six months ending December 31, 1877;
3. For the six months ending June 30, 1878—and semi-annually thereafter, commencing with that for December 31, 1878.

In addition, I will thank you to report by items upon this form, the total cost of construction and equipment for your road to the thirtieth of June, 1878, as it appears on the books of the company.

Very respectfully,

THEOS. FRENCH,

Auditor.

Chas. Crocker, Esq.,

Pres't Southern Pacific R. R. Co.,

San Francisco.

P. S. If possible, please give also the cost of construction of land-grant portion of road.

Twelfth Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., October 4, 1878.

Sir:

Five blanks each of sheets 1, 2, 3 and 4 of Form No. 8 issued by this office have been forwarded to you by this mail.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOS. FRENCH,
Auditor.

Charles Crocker, Esq.,
President Southern Pacific R. R. Co.,
San Francisco, California.

Thirteenth Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., October 7, 1878.

Sir:

Five blanks of Form No. 9, issued by this office, are herewith enclosed.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter, commencing with that for December 31, 1878.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,

San Francisco, California.

Fourteenth Letter.

Department of the Interior.

Office of Auditor of Railroad Accounts.

Washington, D. C., October 10, 1878.

Sir:

Five blanks of Form No. 10 issued by this office, have been forwarded to you by this mail.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,

San Francisco, California.

Fifteenth Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., Oct. 12, 1878.

Sir:

Five blanks of Form No. 11, issued by this office, have been forwarded to you by this mail.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOS. FRENCH,
Auditor.

Charles Crocker, Esq.,
President Southern Pacific R. R. Co.,
San Francisco, California.

Sixteenth Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., October 15, 1878.

Sir:

Five blanks of Form No. 12, issued by this office, have been forwarded to you by this mail.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOPHILUS FRENCH,

Auditor.

S. G.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,

San Francisco, California.

Seventeenth Letter.

Department of the Interior.

Office of Auditor of Railroad Accounts.

Washington, D. C., Oct. 16, 1878.

Sir:

Five blanks of Form No. 13, issued by this office are herewith enclosed.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOPHILUS FRENCH,

Auditor.

S. G.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,

San Francisco, California.

Eighteenth Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., October 17, 1878.

Sir:

Please find herewith enclosed five blanks of Form No. 16, issued by this office.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months thereafter.

Very respectfully,

THEOPHILUS FRENCH,
Auditor.

S. G.

Charles Crocker, Esq.,
President Southern Pacific R. R. Co.,
San Francisco, California.

Nineteenth Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., October 19, 1878.

Sir:

Five blanks each of Sheets 1, 2 and 3, all of Form No. 17, issued by this office, have been forwarded to your address by this mail.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOPHILUS FRENCH,
Auditor.

S. G.

Charles Crocker, Esq.,
President Southern Pacific R. R. Co.,
San Francisco, California.

Twentieth Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., October 22, 1878.

Sir:

Five blanks of form No. 18, issued by this office, are herewith enclosed.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOPHILUS FRENCH,
Auditor.

S. G.

Charles Crocker, Esq.,
President Southern Pacific R. R. Co.,
San Francisco, California.

Twenty-first Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., October 24, 1878.

Sir:

Five blanks of Form No. 19, issued by this office are here enclosed.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOS. FRENCH,
Auditor.

Charles Crocker, Esq.,
President Southern Pacific R. R. Co.,
San Francisco, California.

P. S.—If the method of keeping your accounts will permit this information to be furnished specifically as requested, it is so desired; if not, then as near thereto as possible.

Twenty-second Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., April 17, 1879.

Sir:

Herewith please find enclosed twenty-five blanks and twelve return envelopes, for monthly report of the earnings and expenses of your road from January, 1879, inclusive.

A change in the form of report for the year commencing July 1, 1879, is now being considered, with a view to make it less troublesome, to simplify it, and if possible to reduce it to the minimum of information required.

The design in asking for these statements of earnings and expenses is that the information furnished may be consolidated into a monthly official statement to be issued by this office.

For this reason, it is desirable that the blanks should be filled and forwarded to this office as soon as possible after the close of each month.

Very respectfully,

THEOS. FRENCH,
Auditor.

S. G.

Charles Crocker, Esq.,
President Southern Pacific R. R. Co.,
San Francisco, California.

Twenty-third Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., May 17, 1879.

Sir:

Under the act of Congress approved June 19, 1878, requests have been made from time to time, for reports to be rendered by your company to this office, as follows, viz:

July 13, 1878; Compliance with auditor's act.
July 13, 1878; Address of officers and directors.
July 13, 1878; Business address of company.
July 13, 1878; Information, inspection of books and right of way.
July 13, 1878; Copies of printed reports.
July 13, 1878; Freights, etc., schedules, copies of.
July 13, 1878; Copies of joint tariffs.
July 13, 1878; Special contracts.
July 29, 1878; By-laws and list of committees.
July 24, 1878; Land agent's report.
July 26, 1878; Contracts with telegraph and other companies.
July 22, 1878; Form 1, financial condition.
Aug. 1, 1878; Form 2, revenue.
Sept. 3, 1878; Form 3, ownership and control.
Aug. 27, 1878; Form 4, statistical—traffic.
Sept. 20, 1878; Form 5, operating and other expenses.
Sept. 27, 1878; Form 6, income expenses.
Oct. 1, 1878; Form 7, cost on construction.
Oct. 4, 1878; Form 8, statistical — employees, supplies, repairs, taxes, etc.

Oct. 7, 1878; Form 9, statistical—accidents.

Oct. 10, 1878; Form 10, statistical—funded debt.

Oct. 12, 1878; Form 11, statistical—capital stock.

Oct. 15, 1878; Form 12, statistical—roadway.

Oct. 16, 1878; Form 13, statistical—locomotives.

Feb. 19 1879 — Sept. 25. 1878; Form 14, land department, statistical.

Feb. 19 1879 — Sept. 25,1878; Form 15,land department,financial.

Oct. 17, 1878; Form 16, statistical—bridges.

Oct. 19, 1878; Form 17, statistical—passenger, freight and miscellaneous cars.

Oct. 22, 1878; Form 18, statistical—stocks and bonds.

Oct. 24, 1878; Form 19, freight carried.

Apr. 7, 1879; Form 20, earnings and expenses—monthly.

If any compliance has been made with these requests, it has been only partial. The Supreme Court of the United States having decided that the so-called "Thurman act" of May 7, 1878, is constitutional, there can be little question but that in the main the act of June 19, 1878, creating an auditor of railroad accounts and for other purposes, is also constitutional.

So far as this office is concerned, it is not desirable to have to enforce the penalties provided in case of neglect or refusal on the part of any company to make such reports as may be called for, and it is hoped that your company will comply with the requirements of the law in all

respects, upon demand hereby now and again made, without necessitating an appeal to the courts.

Very respectfully,

THEOPHILUS FRENCH,

Auditor.

S. G.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,

San Francisco, California.

Twenty-fourth Letter.

Department of the Interior.

Office of Auditor of Railroad Accounts.

Washington, D. C., September 1, 1879.

Sir:

Herewith I hand you two copies of blank form adopted by this office for half yearly reports.

This form takes the place of all forms hitherto issued from this office with the exceptions of Form No. 1 and form for "statement of earnings and expenses" (sample copies enclosed) upon which reports will be required monthly as heretofore. To save the labor of copying by hand and to insure accuracy in the copies to be retained, the new are printed in copying ink.

If the information cannot be given in full, or the exact form prescribed, without considerable special expense, it should be given as complete and as nearly in accordance with the form as may be.

Hereafter your accounts should be so kept that you are able to comply fully with the requirements.

The amount received as car service should be reported in full in earnings. The amount paid as "car service" should be reported in full in expenses.

I have to request that reports be made to this office by your road, as follows:

First, Half yearly reports on new form—for each of the periods of six months ending December 31, 1878, and June 30, 1879, showing operations, etc., etc., of the land grant portion of your road.

Second, Half yearly reports, in any convenient form—for each of the aforementioned periods of six months, showing operations, etc., of such portions of your road as have have not received, and are not entitled to receive, any lands of the United States by direct grant from Congress, or indirectly through any State; giving in each case the basis upon which business is pro-rated therewith.

Third, Abstracts of debit and credit footings, on Form No. 1, of your general ledger at close of business before transfer of balances, January 31, 1879, and for the last day of each subsequent month.

Fourth, Statement of earnings and expenses for the months, January, 1879-78, and monthly thereafter.

I will thank you to cause the above-described reports to be made at an early day.

Very respectfully,

THEOS. FRENCH,

Auditor.

S. G.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,

San Francisco, Cal.

Twenty-fifth Letter.

(Stamped)
Rec'd at Secty's Office
Mar. 8, '80
E 174

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., February 28, 1880.

Sir:

By this mail a blank form for semiannual report has been forwarded to your address, and I have to request that report be made upon the same for the six months ending December 31, 1879.

Your attention is respectfully called to the following points, viz:

Pages 4 and 5—"additions and betterments, etc."—This is merely for six months—with the understanding that the total cost has been given in former reports.

Page 6—give such information as may be possible from your accounts as kept.

Pages 7 and 7A—the order of detail is so arranged as to enable the classification "conducting transportation." "Motive power," etc., to be obtained by footing the consecutive items.

Pages, 11, 12, 13, and 13A—the information required by these blanks must of course be governed by your own record of statistics.

Pages 18 and 18A—these pages it will be noted refer to rolling stock owned, and rolling stock not owned, by which latter is meant such as has been rented, leased or purchased on installments.

Pages 19 to 20A—these pages, you will notice, refer to accidents, their classification, casualties and expenses. It is especially requested that this information be given as fully as possible.

While it is not desirable to put you to any extraordinary or unnecessary expense in this matter of making up reports, it is desirable to have the reports as complete as may be, and that they be rendered at as early a day as practicable.

Very respectfully,

THEOS. FRENCH,
Auditor.

J. L. Willcutt, Esq.,
Secretary Southern Pacific R. R. Co.,
San Francisco, Cal.

Twenty-sixth Letter.

(Stamped)
Secretary's Office,
Mar. 25, 1880. E. 275.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., March 18, 1880.

Dear Sir:

In reply to your letter of the ninth instant, I enclose, as requested, one additional blank of Form 2, issued by this office.

Very respectfully,

THEOPH'S FRENCH,
Auditor.

N. D.

J. L. Willcutt, Esq.,
Secretary Southern Pacific R. R. Co., P. O. Box 2008,
San Francisco, Cal.

Twenty-seventh Letter.

(Marked)
Rec'd at Secy's Office,
Mar. 27, '80.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., March 22, 1880.

Dear Sir:

I acknowledge receipt, with your letter of the thirteenth instant, of report on Form 1 of this office, and of statement of earnings and expenses for the month of January last, and forward herewith, as requested, twelve blanks of Form 1.

Very respectfully,
THEOS. FRENCH,
Auditor.

Geo. T. Folsom, Esq.,
General Accountant, Southern Pacific R. R. Co.,
San Francisco, Cal.

Twenty-eighth Letter.

(Stamped)
Secretary's Office,
May 17, 1880.
E. 210.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., May 6, 1880.

Dear Sir:

I have the honor to request that this office be furnished with a copy of your last annual printed report to stockholders.

Very respectfully,

THEOS. FRENCH,
Auditor.

J. L. Willcutt, Esq.,
Secretary Southern Pacific R. R. Co. of California.
San Francisco, Cal.

Twenty-ninth Letter.

(Stamped)
Secretary's Office,
July 12, 1880.
E. 235.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., July 2, 1880.

Dear Sir:

I am in possession of the report of your company on Form 2 8-002 of this office for the period ended December 31, 1879, and will be greatly obliged if you will forward this report for the half year ending June 30, 1880, so that it may be received on or before September 15th, next.

Very respectfully,

THEO'S FRENCH,
Auditor.

J. L. Willcutt, Esq.,
Secretary Southern Pacific R. R. Co.,
San Francisco, Cal.

Thirtieth Letter.

(Stamped)
Rec'd at Secty's Office,
July 30, '80.
E. 239.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., July 22, 1880.

Dear Sir:

In reply to your letter of the fourteenth instant, I desire to say that the report for the half year ending June 30, 1880, on Form 2 of this office, corresponds to the report —already received—for period ending December 31, 1879, on Form 8-002; the same blank being classified in the department list as Form 8-002 and in this office as Form 2.

The desired two blanks are herewith enclosed.

Very respectfully,

THEO'S FRENCH,
Auditor.

N. P.

J. L. Willcutt, Esq.,
Secretary Southern Pacific R. R. Co., P. O. Box 2008,
San Francisco, Cal.

Thirty-first Letter.

(Stamped)
Secretary's Office,
Sep. 15, 1880.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., September 7, 1880.

Dear Sir:

Please furnish this office with certain information as indicated by the several headings following, towit:

1. Amount of granted lands sold up to June 30, 1880, and the consideration therefor.

2. How lands, and the proceeds of sales thereof, are disposed of.

3. Amount and estimated value of lands granted remaining unsold, but earned or capable of being earned under the grant.

4. Number of miles constructed and equipped and the actual cost thereof, *in detail* at time of completion.

5. Estimated number of miles to be constructed, and cost of same.

Information in reference to the aforegoing has been called for by the House Pacific Railroad Committee, and it is important to have the same at an early day.

Very respectfully,

THEO'S FRENCH,
Auditor.

F.

J. L. Willcutt, Esq.,
Secretary Southern Pacific R. R. Co.,
San Francisco, Cal.

Thirty-second Letter.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., September 18, 1880.

Dear Sir:

I beg to acknowledge the receipt of your letter of the tenth instant, with accompanying statements for month of July, 1880, on Forms 1 and 3 of this office, and as requested, enclose herewith, twelve (12) blanks *from* No. 3.

Very respectfully,

THEOS. FRENCH,
Auditor.

E. W. R.

Geo. T. Folsom, Esq.,
Gen'l Acct. Southern Pac. R. R. Co., P. O. Box 2008,
San Francisco, Cal.

Thirty-third Letter.

(Stamped)
Rec'd at Secty's Office,
Mar. 11, 1881.
E. 231.

Department of the Interior.
Office of Auditor of Railroad Accounts.
Washington, D. C., March 1, 1881.

Sir:

By this mail two (2) blanks, Form No. 8-002 of this office, have been forwarded to your address, and I have to

request reports thereon for periods of six months ending December 31, 1880, and June 30, 1881.

Very respectfully,

THEO'S FRENCH,
Auditor.

Geo. T. Folsom, Esq.,
Gen'l Acct. Southern Pacific R. R. Co. of California.
San Francisco, Cal.

Thirty-fourth Letter.

(Stamped)
Rec'd at Secy's Office,
Mar. 28, '81.

Department of the Interior.
Office of Commissioner of Railroads.
Washington, D. C., March 19, 1881.

Dear Sir:

In compliance with your request of the eleventh instant, I send you by to-day's mail, two (2) additional blanks—Form No. 8-002.

Very respectfully,

THEO'S FRENCH,
Commissioner.

Geo. T. Folsom, Esq.,
General Accountant, Southern Pacific R. R. Co.,
San Francisco, Cal.

Thirty-fifth Letter.

(Stamped)
Secretary's Office.
May 2, 1881.

Department of the Interior.
Railroad Office.
Washington, D. C., April 19, 1881.

Dear Sir:

Your abstract of debit and credit footings for February, with statement of earnings and expenses for same month, received.

Replying to request contained in your form accompanying same, I enclose you a supply of these blank forms.

Very truly yours,
THEO'S FRENCH,
Commissioner.

J. L. Willcutt, Esq.,
Secretary Southern Pacific R. R. Co.,
San Francisco, Cal.

Thirty-sixth Letter.

(Stamped)
Secretary's Office.
May 19, 1881.

Department of the Interior.
Railroad Office.
Washington, D. C., May 12, 1881.

Dear Sir:

I have the honor to acknowledge the receipt of your let-

ter of May 4, with enclosure for Southern Pacific Railroad.

Very respectfully,

THEO'S FRENCH,
F. B. P.
Commissioner.

J. L. Willcutt, Esq.,
Secretary Southern Pacific R. R. Co.,
San Francisco, Cal.
(in lead pencil)
Ab. of Dr. & Cr. footings,
Statement E. & E.

Thirty-seventh Letter.

(Stamped)
Secretary's Office,
May 19, 1881.

Department of the Interior.
Railroad Office.
Washington, D. C., May 12, 1881.

Dear Sir:

I have the honor to acknowledge hereby, the receipt of your communication of April 28, as also enclosure.

Very respectfully,

THEO'S FRENCH,
F. B. P.
Commissioner.

J. L. Willcutt, Esq.,
Secretary Southern Pacific R. R. Co.,
San Francisco, Cal.
(In lead pencil)
Report for h'f year ending Dec. 31, '80.

(The batch of thirty-six letters embraced in the foregoing forty-one pages, dated respectively July 13, 1878, July 22, 1878, July 26, 1878, July 29, 1878, August 1, 1878, August 27, 1878, September 3, 1878, September 9, 1878, September 20, 1878, September 27, 1878, October 1, 1878, October 4, 1878, October 7, 1878, October 10, 1878, October 12, 1878, October 15, 1878, October 16, 1878, October 17, 1878, October 19, 1878, October 22, 1878, October 24, 1878, April 17, 1879, May 17, 1879, September 1, 1879, February 28, 1880, March 18, 1880, March 22, 1880, May 6, 1880, July 2, 1880, July 22, 1880, September 7, 1880, September 18, 1880, March 1, 1881, March 19, 1881, April 19, 1881, May 12, 1881, May 12, 1881, are marked by the special examiner "Defendants' Exhibit before the special examiner No. 70, Stephen Potter, special examiner.")

I hereby certify that I have compared the thirty-six letters embraced in the foregoing forty-one pages and marked "Defendants' exhibit before the special examiner No. 70, Stephen Potter, special examiner," with the originals, and find them to be full, true and correct copies thereof.

STEPHEN POTTER,
Special examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 71.—Letter.

(Before the Special Examiner.)

Ld Gt R. R.

Department of the Interior.

Washington, D. C., Oct. 2, 1868.

Sir:

I have received your letter of the first instant, and in reply have to state that the annual report of the Southern Pacific Railroad Company was received here on the twenty-sixth ultimo.

Very respectfully,

Your obedient servant,

W. T. OTTO,

Acting secretary.

C. P. Huntington, Esq.,

Attorney Southern Pacific R. R. Co.,

54 William St., New York.

(Marked "Defendants' Exhibit before the special examiner No. 71, Stephen Potter, special examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special examiner.

San Francisco, Sept. 30, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 71.

Defendants' Exhibit No. 72.—Letter.

(Before the Special Examiner.)

W. M. F.

(Stamped)
Secretary's Office,
November 9, 1881.
(8—106.)

Department of the Interior,
Office of Commissioner of Railroads.
Washington, D. C., November 2, 1881.

Sir:

Your favor of the nineteenth ultimo, containing stated enclosures of semi-annual reports of your road for the six months ending June 30, 1881 (received through Mr. C. P. Huntington, A. & A., New York), is received, for which please accept thanks.

Very respectfully,

JOSEPH K. McCAMMON,
Commissioner.

To J. L. Willcutt, Esq.,
Secretary Southern Pacific Railroad Company.
San Francisco, Cal.
(1680—500.)

[Endorsed on back]:
Joseph J. McCammon, Commissioner.
Washington, November 2, 1881.
Acknowledging receipt of semi-annual report.

(Marked "Defendants' Exhibit before the Special Examiner, No. 72," Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing in-

strument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 73.—Letter.

(Before the Special Examiner.)

(8—106.)

(Stamped)
Secretary's Office,
February 8, 1882.

Department of the Interior.
Office of Commissioner of Railroads.
Washington D. C., February 1, 1882.

Sir:

Your favor of the twenty-fourth ultimo, containing stated enclosures of annual report to stockholders for 1880, is received, for which please accept thanks.

Very respectfully,

JOSEPH K. McCAMMON,
Commissioner.
Per W. M. F.

To J. L. Willcutt, Esq.,
Secretary Southern Pacific Railroad Company.
San Francisco, Cal.
(1680—500.)

[Endorsed on back]:

Jos. K. McCammon,

Washington, February 1, 1882.

Acknowledging receipt of copies of our reports to stockholders. (Marked "Defendants' Exhibit before the Special Examiner No. 73, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 74.—Letter.

(Before the Special Examiner.)

(8—106.)

(Stamped)

Secretary's Office,

Received May 27, 1882.

Answered, ————.

Respectfully referred to

Department of the Interior.

Office of Commissioner of Railroads.

Washington, D. C., May 20, 1882.

Sir:

Your favor of the fifth instant, containing stated en-

closures of report for half year ending December 31, 1881, is received, for which please accept thanks.

Very respectfully,

W. H. ARMSTRONG,
Commissioner.
Per K. S.

To J. L. Willcutt, Esq.,
Secretary Southern Pacific Railroad Company.
San Francisco, Cal.
(1680—500.)

[Endorsed on back]: W. H. Armstrong, Commissioner, Washington, May 20, 1882. Acknowledging receipt of report.

(Marked "Defendants' Exhibit before the Special Examiner No. 74, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 75.—Letter.
(Before the Special Examiner.)
(8—106.)

(Stamped)
Secretary's Office,
Received November 17, 1882.
Answered ————.

Department of the Interior.
Office of Commissioner of Railroads.
Washington, D. C., November 9, 1882.

Sir:

Your favor of the twenty-eighth ultimo, containing stated enclosure of report of the Southern Pacific Railroad Company for the half year ending June 30, 1882, is received, for which please accept thanks.

Very respectfully,

WM. H. ARMSTRONG,
Commissioner.
F. B. P.

To J. L. Willcutt, Esq.,
Secretary Southern Pacific Railroad Company.
San Francisco, Cal.
(1680—500.)

[Endorsed on back]: W. H. Armstrong, Washington, November 9, 1882. Acknowledging receipt of report for half year ending June 30, 1882.

(Marked "Defendants' Exhibit before the Special Examiner No. 75, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 76.—Letter.

(Before the Special Examiner.)

(8—106.)

(Stamped)

Secretary's Office,

Received August 21, 1883.

Answered ————.

Department of the Interior.

Office of Commissioner of Railroads.

Washington, D. C., August 11, 1883.

Sir:

Your favor of the thirtieth ultimo, containing stated enclosure of report for half year ending December 31, 1882, on our form 8—002, is received, for which please accept thanks.

Very respectfully,

W. H. ARMSTRONG.

Commissioner.

T. J. Walker.

To J. L. Willcutt, Esq.,

Secretary Southern Pacific Railroad Company.

San Francisco, Cal.

(1680—500.)

(Marked "Defendants' Exhibit before the Special Examiner, No. 76, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 77.—Letter.

(Before the Special Examiner.)

(Stamped)

Secretary's Office,

Received April 11, 1884.

Answered ————.

Department of the Interior.

Office of Commissioner of Railroads.

Washington, April 3, 1884.

To J. L. Willcutt, Esq.,

Secretary Southern Pacific Railroad Company.

San Francisco, Cal.

Sir:

After careful consideration, I have concluded that your company may render an annual report on our form 8—002, in lieu of the half-yearly reports heretofore required. Such annual report should be made for the fiscal year ending June 30, in each year, and should reach this office not later than September 1. This change is made to promote the convenience of your office and upon your assurance that the report will be furnished by the time indicated, the semi-annual report will be dispensed with, reserving, however, the right to require it as heretofore, if it should appear necessary.

The monthly reports of earnings and expenses will be required as formerly.

Very respectfully,

F. B. PICKERILL,

For the Commissioner.

(Marked "Defendants' Exhibit before the Special Examiner No. 77, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 78.—Letter.

(Before the Special Examiner.)

(Stamped)
Secretary's Office,
Received September 12, 1884.
Answered, ————.

Department of the Interior.
Office of Commissioner of Railroads.
Washington, September 6, 1884.

To J. L. Willcutt, Esq.,
Secretary Southern Pacific Railroad Company.
San Francisco, Cal.

Dear Sir:

I have the honor to acknowledge receipt of your letter of the twenty-third ultimo, also, by express, your report for 1884, on our form 8—008.

Very respectfully,

THOS. J. WALKER,
In charge of office in the Commissioner's absence.

(Marked "Defendants' Exhibit before the Special Examiner No. 78, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 79.—Letter.

(Before the Special Examiner.)

(Stamped)
Secretary's Office,
Received February 18, 1885.
Answered, ————.

Department of the Interior.
Office of Commissioner of Railroads.
Washington, February 10, 1885.

J. W. Wilcutt, Esq.,
Secretary Southern Pacific Railroad Company.
San Francisco, Cal.

My Dear Sir:

Many thanks for your prompt and kind compliance in sending two full sets reports.

Very truly yours, et cetera,

F. B. PICKERILL.

(Marked "Defendants' Exhibit before the Special Examiner No. 79, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

F. B. P.

Defendants' Exhibit No. 80.—Letter.

(Before the Special Examiner.)

(Stamped)

Secretary's Office.

Received June 1, 1885.

Answered, ————.

Department of the Interior.

Office of Commissioner of Railroads.

J. L. Wilcutt, Esq.,

Secretary of Southern Pacific Railroad Company,

San Francisco, Cal.

Dear Sir:

I have received the letter of the fourteenth instant in which you inform me that "by reason of the lease of the Southern Pacific Railroad of California to the Southern Pacific Company, the operations of this road will hereafter be included in the statements of that company."

I beg leave to suggest that the obligations of the Southern Pacific Railroad of California to the United States government are in no manner affected by the lease to

which you refer, and consequently, that statements of the operations of that company are as necessary now and will be hereafter, as they have been hitherto. Therefore I respectfully request that you will continue to furnish them.

Most respectfully yours,

J. E. JOHNSTON,
Commissioner.

(Marked "Defendants' Exhibit before the Special Examiner No. 80, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed] Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 81—Letter.
(Before the Special Examiner.)

Department of the Interior.
Office of the Commissioner of Railroads.
Washington, December 21, 1885.

Charles Crocker, Esq.,
President of the Southern Pacific Railroad Company,
San Francisco, Cal.

Sir:

I respectfully inclose herewith rules established by the Secretary of the Interior, on the subject of the reports

and accounts to be furnished to this office, and blank forms of those accounts.

Your obedient servant,

J. E. JOHNSTON,
Commissioner.

(In lead pencil.)

Received 1 copy form 8—008A.
1 copy form 8—002B.
Also copies circular letter of November 27, 1885.
(Copy of inclosure.)

System of Reports.

Department of the Interior.
Office of the Commissioner of Railroads,
Washington, D. C., November 27, 1885.

By virtue of the authority vested in the commissioner of railroads by the third section of the act of June 19, 1878, by and under the direction, and with the approval of the secretary of the interior, I do hereby prescribe the following system of sworn "reports to be rendered" to me by "the railroad companies, whose roads are in whole or in part west, north, or south of the Missouri river, and to which the United States have granted any loan of credit or subsidy in bonds or lands," which system is to take effect on and after the thirty-first day of December, 1885.

1. Annual report to be returned to the commissioner of railroads, to be made on or before the first day of February of each year, and to include business to the thirty-first of December in the year next preceding, in accordance with form hereto annexed marked "A."

2. Semi-annual report, embracing—The whole earnings of each road and the whole earnings of each branch, the net earnings of each road and the net earnings of each branch. The items of charge which make the difference between the gross earnings of each road and its net earnings, and of each branch and its net earnings, specifically showing the items composing such difference, and, in other respects, according to the form hereto annexed marked "B."

3. A monthly report, between the first and fifteenth of each month, showing the gross and net earnings of each road during the last preceding month.

4. Where a portion of any road is subsidized and a portion not subsidized, a separate account and report of the *actual* gross and net earnings of the subsidized portion of the road, and the actual gross and net earnings of the nonsubsidized part according to rules 1, 2, and 3, and forms "A" and "B."

5. A report—at least ten days in advance of each meeting of the stockholders—specifying distinctly what business is to be done or submitted for action at such meeting.

6. A report, to be made at least ten days before each meeting of the directors, with a full and specific statement of all business to be submitted to such board.

7. A report to be made at least three days in advance of each meeting of the executive committee of the board of directors, with a full statement of all business to be submitted to each committee.

8. A report of the minutes of each meeting of the

stockholders within ten days after the adjournment of such meeting.

9. A full report of the minutes of each meeting of the board of directors, to be returned within ten days after the adjournment of such meeting, including names of directors present, and how each voted.

10. A full report of the minutes of each meeting of the executive committee, to be submitted within ten days after adjournment, including the names of directors present, and how each voted.

11. A quarterly report of the rates charged during each quarter, within fifteen days after the close of the quarter, for passengers and traffic on each road and each of its branches, both as to through and local traffic on each, and the portion of road or roads to which such rate or rates applied.

12. A distinct and full report of all special rates, if any, to whom allowed, also all, if any, rebates or drawbacks, and to whom, and the aggregate amount of each, to be returned within fifteen days, after the close of each quarter.

13. All contracts made with any other railroad or transportation company or companies within ten days after such contract is made, with a copy of the contract if in writing, with a full statement thereof if in parol.

J. E. JOHNSTON,
Commissioner of Railroads.

Approved:
L. Q. C. Lamar,
Secretary.

(4784—500.)

(Marked "Defendants' Exhibit before the Special Examiner No. 81, Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 82.—Letter.

(Before the Special Examiner.)

(8—106.)

(Stamped)
Secretary's Office.
Received September 6, 1886.
Answered file.
Respectfully referred to ———.

Department of the Interior.
Office of Commissioner of Railroads.
Washington, D. C., August 30, 1886.

J. L. Willcutt, Esq.,
Secretary Southern Pacific Railroad Company,
San Francisco, Cal.

Sir:

Your favor of the eighteenth instant, containing enclosures, as stated below, has been received, for which you will please accept my thanks.

Very respectfully, in absence of the commissioner,

EDWARD HERRICK,

In charge.

Report form "B" for six months ending June 30, 1886. (15006—500.)

(Marked Defendants' Exhibit before the Special Examiner No. 82, Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 83.—Letter.

(Before the Special Examiner.)

(8—106.)

(Stamped)

Secretary's Office.

Received May 13, 1887.

Answered—file.

Respectfully referred to

Department of the Interior.

Office of Commissioner of Railroads.

Washington, D. C., May 7, 1887.

Sir:

Your favor of the twenty-ninth ultimo containing stat-

ed enclosures of reports form "A" & "B" for December 31, 1886, is received, for which please accept thanks.

Very respectfully,

EDWARD HERRICK,
For the Commissioner.

To J. L. Willcutt, Esq.,
Secretary Southern Pacific Railroad Company,
San Francisco, Cal.

(7747—500.) (Marked "Defendants' Exhibit before the Special Examiner, No. 83, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 84.—Letter.

(Before the Special Examiner.)

(8—007.)

(Stamped)
Secretary's Office.
Received May 16, 1887.
Answered--receipt acknowledged on blank form.
Respectfully referred to
Department of the Interior.
Office of Commissioner of Railroads.
Washington, May 7, 1887.

J. L. Willcutt, Esq.,

Secretary Southern Pacific Railroad Company,

San Francisco.

Dear Sir:

Inclosed please find supply of our blank forms, as follows:

..... Form 8—001. General ledger footings.

.....3.. Form 8—002. Semi-annual reports.

..... Form 8—003. Monthly earnings and expenses.

....

....

for use in reporting to this office.

You are respectfully requested to give timely notice before the supply is exhausted, in order that you may at all times have a sufficient quantity on which to make prompt returns.

Please acknowledge receipt on attached form.

Very respectfully,

EDWARD HERRICK,

For the Commissioner.

(9—22—'83—300.)

(Marked "Defendants' Exhibit before the Special Examiner No. 84, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1898. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 85.—Letter.

(Before the Special Examiner.)

(8—106.)

(Stamped)

Received September 23, 188 .

Answered.

Respectfully referred to

Department of the Interior.

Office of the Commissioner of Railroads.

Washington, D. C., September 17, 1887.

Sir:

Your favor of the fifth instant containing stated enclosures of report, form "B" for June 30, 1887, is received, for which please accept thanks.

Very respectfully,

EDWARD HERRICK,

For the Commissioner.

To J. *H.* Willcutt, Esq.,

Secretary Southern Pacific Railroad Company,

San Francisco.

(7747—500.)

(Marked "Defendants' Exhibit before the Special Examiner, No. 85, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing in-

strument with the original, and find that it is a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 86.—Letter.

(Before the Special Examiner.)

(8—106.)

(Stamped)

Secretary's Office.
Received April 9, 1888.
Answered—file.
Respectfully referred to
Department of the Interior.
Office of Commissioner of Railroads.
Washington, D. C., April 2, 1888.

Sir:

Your favor of the twenty-second ultimo contained stated enclosures of reports "A" & "B" for December 31, 1887 is received, for which please accept thanks.

Very respectfully,

EDWARD HERRICK,
For the Commissioner.

To J. *H.* Willcutt, Esq.,
Secretary Southern Pacific Railroad Company,
San Francisco.
(7747—500.)

(Marked "Defendants' Exhibit before the Special Examiner, No. 86, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 87.—Letter.

Before the Special Examiner.

(8—106.)

(Stamped)
Received June 11, 1889.
Answered—file.
Respectfully referred to

Department of the Interior.
Office of Commissioner of Railroads,
Washington, D. C., June 4, 1889.

Sir:

Your favor of the twenty-second ultimo containing stated enclosures of report on form 8-008 "A" for the year

ending December 31, 1888, is received, for which please accept thanks.

Very respectfully,

EDWARD HERRICK,
In Charge.

To *J. H.* Willcutt, Esq.,
Secretary Southern Pacific Railroad Company,
San Francisco, California.

(16032b-500)

(Marked Defendants' Exhibit before the Special Examiner, No. 87, Stephen Potter, special examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 90.—Trust Mortgage.
(Before the Special Examiner.)

(4-83-250.)

Date. **This indenture, made and entered into this the first day of April, A. D. 1875, by and between the Southern Pacific Railroad Company, a railroad corporation duly incorporated and organized under and in pursuance of the laws of the State of California,**

Trustees. **party of the first part, and D. O. Mills and Lloyd Tevis, of the city and county of San Francisco, California, parties of the second part, witnesseth: That**

Purpose of Mortgage. **Whereas, the said party of the first part desires to complete the construction and equipment of its railroad and telegraph lines in the State of California, running from the city of San Francisco, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley and Polonio Pass, to the Colorado river, at or near the "Needles"; also from Carnadero Junction to San Benito; also from Los Gatos creek, via Goshen, to the junction with**

Route of Railroad. **the first mentioned line between Poso creek and Kern river; also from the junction near Tehachapi Pass, via Los Angeles, to the Texas Pacific Railroad near Fort Yuma; and also from Los Angeles to Wilmington, on San Pedro bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, and to cancel its present bonded indebtedness for construction, secured by a mortgage heretofore made, and bearing date November first, eighteen**

hundred and seventy, and to that end intends and is about to issue its first mortgage bonds upon said railroad and telegraph line, and its rolling stock, fixtures and franchises, and also upon the lands granted to it by Congress, by the act of Congress, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved July twenty-seventh, eighteen hundred and sixty-six, and the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, not sold or otherwise disposed of prior to the execution of this mortgage, aggregating, as near as can be estimated, eleven millions of acres; and

Property mortgaged includes Land Grants.

Whereas, heretofore, towit: on the nineteenth day of December, A. D. eighteen hundred and seventy-four, the board of directors of said company, pursuant to the statute of the State of California in such cases made and provided, at a meeting of said board at which all the members thereof were present, did, by a resolution to that effect, which was unanimously adopted and passed, determine and direct that first mortgage bonds upon said railroad and telegraph line, its rolling stock, fixtures and franchises, and upon said hereinbefore described lands to the number of forty-eight thousand (forty-four thousand of which shall be for one thousand dollars each, and four thousand of which shall be for the sum of five

Board of Directors authorize Mortgage to be made.

hundred dollars each), in seven series, to be designated by the letters of the alphabet, commencing with the letter "A," and followed by the succeeding letters in regular order to the letter "G," both inclusive, be prepared, executed and issued by the president and secretary of said company. Series "A" to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series "B" to "F," both inclusive, consisting each of five thousand bonds, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and series "G," consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds being payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually. The said series "A" to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the board of directors of said company may direct, all of said bonds aggregating the sum of forty-six millions of dollars; and

Description of Bonds.

Whereas, the said board of directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further resolve, that the said

series "A" of said bonds should be executed and issued in substantially the following form, and that the succeeding series of said bonds should be in a similar form, with the necessary changes to conform to said resolutions or orders, which form is as follows, to-wit:

The United States of America:

Form of Bond. $1,000 in United States Gold Coin (Vignette.) In United States $1,000 Gold Coin

First Mortgage Bond.

No. —— Series "A."

The Southern Pacific Railroad Company (of California).

For value received promises to pay one thousand dollars to Mark Hopkins, or bearer, in the city of New

Rate of interest. York, thirty years from the date hereof, with interest thereon at the rate of six per centum per annum from said date, payable semi-annually on the first day of October next ensuing, and on the first day of April and October in each year thereafter, in the city of New York, on presentation and surrender of the respective coupons hereunto annexed, both principal and interest payable in United States gold coin at par, dollar for dollar.

This bond is one of series "A" of the first mortgage bonds issued, and to be issued, by the said Southern Pacific *Pacific* Railroad Company in seven series, designated respectively by the letters of the alphabet, commencing with "A," and ending with "G," both inclusive. Series "A," consisting of thirteen thou-

sand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series "B," to "F," both inclusive, consisting each of five thousand bonds for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and series "G," consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds being payable thirty years after their respective date, with the interest at the rate of six per centum per annum, payable semi-annually.

Series.

Dates.

The said series "A" to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the board of directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

No preference by reason of priority.

The holder of any of such bonds is to have no preference over any other holder of any of said bonds by reason of any priority in date or the time of issuing the same or otherwise.

All of said bonds are secured by a mortgage or deed of trust, bearing even date with the bonds constituting series "A," duly executed by said company to D. O. Mills and Lloyd Tevis, San Francisco, California, as trustees, upon its railroad and telegraph

lines in the State of California, running from the city of San Francisco, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley and Polonio Pass, to the Colorado river, at or near the "Needles"; also from Carnadero Junction to San Benito; also from Los Gatos creek, via Goshen, to the junction with the first mentioned line between Posa creek and Kern river; also from the junction near Tehachapi Pass, via Los Angeles, to the Texas Pacific Railroad near Fort Yuma; and also from Los Angeles to Wilmington, on San Pedro bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, with all the rolling stock, stations, fixtures, and franchises for the permanent use thereof, and the appurtenances thereto now owned or held, or that may be hereafter required by said company for the permanent use of said railroad and telegraph lines.

How secured.

Also, upon all the lands granted to said company by the Congress of the United States, to aid it in the construction of said railroad and telegraph lines, not sold or otherwise disposed of prior to the execution of said mortgage, aggregating, as near as can be estimated, eleven millions of acres.

Includes Lands.

In testimony whereof, the Southern Pacific Railroad Company has caused its corporate seal to be hereunto affixed, and these presents to be signed by

its president and secretary, this first day of April, in the year of our Lord one thousand eight hundred and seventy-five.

————————, President.

————————, Secretary.

And whereas, the said board of directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid did further direct that to each of said bonds there should be attached sixty interest coupons, numbered respectively from one to sixty, inclusive, substantially in the following form, towit:

Form of Coupon.

$30. Southern Pacific Railroad Company of California. Series A.

Coupon Bond No. —— No. ——

Thirty Dollars.

Interest due ————————

Payable in the city of New York, in United States gold coin.

————————, Secretary.

with such changes in amount in the body and in the coupon as shall be necessary to conform to the order of the board of directors aforesaid, in regard to the several amounts or sums which are payable in each class of bonds; and

Whereas, by an act of Congress of the United States of America, approved on the twenty-seventh day of July, A. D. eighteen hundred and sixty-six, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the

States of Missouri and Arkansas to the Pacific Coast," there was granted to the said Southern Pacific Railroad Company, party of the first part, a large body of public lands of the United States, to-wit: Every alternate section of public lands, designated by odd numbers, to the amount of ten alternate sections per mile on each side of the railroad and telegraph line of said company, running from the bay of San Francisco to the southeasterly line of the State of California, being about six hundred and thirty-six miles, not sold, reserved, granted or otherwise appropriated, and free from preemption, homestead, or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office, and such other alternate sections, designated by odd numbers as aforesaid, and situated not more than ten miles beyond the limits of the said first alternate sections, which may be selected by said company in lieu of any of the sections first aforesaid which may have been sold, granted, reserved, preempted, occupied as homesteads, or otherwise disposed of, or to which other rights may have attached, as provided in the act of Congress aforesaid for the purpose of aiding in the construction of the railroad and telegraph line of the said party of the first part; and

U. S. Government Land Grant.

Whereas, by an act of Congress of the United States of America, approved on the third day of March, eighteen hundred and seventy-one, entitled

"An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," there was granted to the said Southern Pacific Railroad Company the authority to construct a line of railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, with the same rights, land grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to and imposed upon the said Southern Pacific Railroad Company of California, by the aforesaid act of July twenty-seventh, eighteen hundred and sixty-six, before recited, subject to the rights, present and prospective, of the Atlantic & Pacific Railroad Company, which said last line of road is of the length of three hundred and fifty-six and seven one-hundredths miles; and

Act of Congress Authorizing the Company to construct lines to connect with Texas Pacific Railroad and Atlantic & Pacific Railroad.

Whereas, the said board of directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that, to secure the payment of said bonds, a first mortgage upon said road and its rolling stock, stations, fixtures, right of way and franchises, and the lands aforesaid granted by said acts of Congress, not sold or otherwise disposed of or contracted to be sold, as shown by the books of said company, should be executed under the corporate seal of said company, and be signed by its president and secretary, to D. O. Mills and Lloyd Tevis, both of the city and county of San Francisco, State of California, as trustees for the holders of said bonds; and

Mortgage to be executed to Trustees.

Whereas, said board of directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that a sinking fund should be created for the redemption and payment of said bonds, by setting apart the sum of one hundred thousand dollars of the net income of said road in the year eighteen hundred and eighty-two, and each year thereafter until all of said bonds, principal and interest, shall have been redeemed or paid in trust to be loaned out at interest, upon good securities, or otherwise invested under the order and direction of said board of directors, or used to redeem said bonds as often as one hundred thousand dollars shall come into the sinking fund, in which case notice shall be published in one paper in the city of San Francisco and two papers in New York City, that bonds will be redeemed at a price not exceeding their par value, and inviting bids for the surrender thereof at prices to be named, not exceeding the par value of said bonds; the lowest bids less than par to be accepted, and bonds redeemed, to the extent of the money in the sinking fund.

Sinking Fund $100,000 yearly commencing 1882.

Redemption of Bonds.

Now, therefore, this indenture witnesseth, that the said Southern Pacific Railroad Company, for the better securing of the payment of the principal and interest of the said first mortgage bonds, and in consideration also of the sum of one dollar, to it in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and aliened, conveyed and confirmed,

Description of property conveyed to Trustees.

and by these presents, doth grant, bargain, sell, alien, convey and confirm unto the said parties of the second part, and to their successors duly appointed, for the execution of the trusts herein set forth, the following property, now or hereafter constituted, purchased, acquired, held in possession and owned by said company, towit: The whole of the railroad and telegraph line of the said company, running from the city of San Francisco, in the State of California, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley and Polonio Pass, to the Colorado river, at or near the "Needles"; also from Carnadero Junction to San Benito; also from Los Gatos creek, via Goshen, to the junction with the first mentioned line, between Poso creek and Kern river; also from the junction near Tehachapi Pass, via Los Angeles, to the Texas Pacific Railroad near Fort Yuma; and also from Los Angeles to Wilmington, on San Pedro bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, including all the rights of way, roadway, track and tracks, together with all the superstructures, depots, depot grounds, stationhouses, wateringplaces, workshops, machineshops, machinery, side tracks, turnouts, turntables, weighing scales, locomotives, tenders, cars, rolling stock of all kinds, full equipments, fixtures, tools and all other property which may be necessarily or ordinarily used in operating or repairing the said railroad, including all of the said property, which is now or may hereafter, in whole or

in part, be constructed or completed, purchased, acquired, held or owned by the said company, pertaining to said railroad, and all the corporate rights, privileges and franchises of said company, pertaining to said road, together with all and singular the tenements, hereditaments, and appurtenances, thereunto belonging and appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues and profits thereof, with all the rights, titles, interests, estate, property, succession, claim and demand, in law or equity, of the said party of the first part, of, in and to the same, or any part and parcel thereof; to have and to hold the above granted and described premises, property and franchises, with the appurtenances, unto the said parties of the second part, and to the survivor of them and to their successors, duly appointed, upon trust and for the use and benefit of the person or persons, body or bodies, politic or corporate, who shall have become, or be from time to time, holders of the said "first mortgage bonds," or any of them. Provided, always, and these presents are upon the express condition that if the said party of the first part, or its successors, shall well and truly pay, or cause or procure to be paid unto the holders, from time to time, of said bonds, and each and every one of them, the said sums of money secured to be paid by the said bonds, and the interest coupons attached thereto, at the places and times, and in the manner set forth in the said bonds, according to the true intent and meaning

thereof, then these presents, and all the property, estate, right, franchises and privileges herein and hereby granted and conveyed, shall cease, determine and be void. But if default shall be made in the payment of the said sums of money specified in said bonds, or in the payment of said interest coupons, or either of them, or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the same should have been paid, according to the terms of said bonds, then the said parties of the second part, or either of them, upon the refusal of the other, or their successors in said trust, by themselves, or their agents, or servants, in that behalf, may, upon request of the holder or holders of not less than one-fourth of said bonds, on which the interest or principal shall so be and have so remained in default, as aforesaid, enter into and upon and take possession of all, or in their or his discretion, any part of the said premises and property hereinbefore described, and work and operate the said railroad, and receive the income, receipts and profits thereof, and out of the same pay: First. The expenses of running and operating the same, including therein such reasonable compensation as they or he may allow to the several persons employed or engaged in the running and superintendence of the same, and a reasonable compensation to the parties of the second part, or their successors, or such of them as shall act in the premises, for their or his care, diligence and responsibility in the premises.

Proceedings in event of default in payment

Second. The expenses of keeping the said road, the appurtenances, the locomotives and the rolling stock thereof in good and sufficient repair, to prevent deterioration in the value thereof, and all other reasonable and proper charges and expenses of the care and management thereof. And, Third. Pay as far as the same will suffice, all interest and principal, if any, which may be due on said bonds; and in case of any deficiency, to apply said receipts, after the payment of all said charges and expenses, to the payment thereof, ratably, without preference of any kind, or the said parties of the second part may in such case foreclose this mortgage, and sell and dispose of, according to law, all the rights, property, privileges, franchises, real and personal, with the appurtenances herein and hereby granted, or so much thereof as may be necessary, and out of the money arising from such sale, pay: First. The costs, and charges, and expenses of the foreclosure and sale, including therein reasonable counsel fees for conducting said proceedings, to be allowed and fixed by the Court, but not exceeding thirty thousand dollars. Second. Any expenses, costs and charges of the execution of the trust previously incurred and remaining unpaid. Third. A reasonable compensation to the trustees, or one of them, who may act, for their or his care, trouble and service in completing the execution of his trust and the distribution of the proceeds of sale, to be fixed by the Court, but not exceeding twenty thousand dollars. And, Fourth. To distribute the

residue of such proceeds among the holders of said bonds, in proportion to their several interests, until all have been paid in full, principal and accrued interests.

Proceeds from sale of Depot Lands, etc., not needed for such purposes, may be sold and proceeds applied to redemption of Bonds.

And the said party of the first part hereby covenants and agrees that if, at any time, any lands now used for depot or shop purposes, or right of way, or water, or any lands not now used, but which may be hereafter used for such purposes, shall, for any cause, cease to be needed or used by said party of the first part for such purposes, the said parties of the second part may sell the same at the price to be agreed upon by the parties of the first and second parts, and apply the money realized from such sale or sales to the redemption of said bonds, in the manner hereinafter provided in the case of money realized from the sale of lands granted by the United States to the said party of the first part.

Company to pay all taxes, assessments, etc., or in default Trustees may pay and receive 7 per cent interest on such payments.

And the said party of the first part hereby agrees and covenants to and with the said parties of the second part, and their successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be imposed upon the property herein described and hereby mortgaged, and every part thereof, and the said parties of the second part, the survivor of them, or their successors in said trust, or any one or more of the holders of said bonds, may, in case of default of the said party of the first part in this behalf, pay and discharge the same, and any

other lien or incumbrance upon said property, which may in any way, either in law or equity, be or become in effect a charge or lien thereon, prior to these presents, or to which this mortgage may be subject or subordinate and for all payments thus made the parties so making the same shall be allowed interest thereon at the rate of seven per centum per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents, and declared to be payable and collectible in the same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said parties of the second part, upon demand in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises hereinbefore provided.

Will execute any further conveyances required.

And the said party of the first part hereby further covenants and agrees to and with the said parties of the second part, and their successors in said trust, that they will at any and all times hereafter, upon the request of the said parties of the second part, execute, acknowledge and deliver to the said parties of the second part, all and every such further, necessary and reasonable conveyances and assurances of the said premises or any part thereof, as may by the parties of the second part, or the survivor of them, or his or their successors in the trust hereby created, be reasonably advised or required for more fully carrying into effect the objects of this conveyance,

Compensation to Trustees.

and the said parties of the second part, and their successors in said trust, shall be entitled to receive a just and proper compensation for all services rendered by them in the discharge of said trust, and the same shall be deemed to be secured hereby.

Agents of Trustees.

And it is hereby stipulated and agreed that the said parties of the second part, and their successors in said trust, shall not be responsible for the acts or omissions of any agent or agents employed by him or them, in any manner, in and about the execution of the trust hereby created, when such agent or agents are selected with reasonable discretion; or with the approbation, or with the knowledge and without the express disapprobation of said party of the first part, nor shall either of the said parties of the second part be responsible for any act or omission of the other in the execution of said trust.

Conveyance of land to Trustees.

And, therefore, this indenture further witnesseth: That the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds, and the interest thereon, and in consideration of the premises, and also for and in consideration of the sum of one dollar to the said party of the first part in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed and confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey and confirm unto the said parties of the second part,

as trustees, and to their successors and survivor, and their assigns forever.

All and singular, the said several sections of land so as aforesaid granted by said acts of Congress; and also all the estate, right, title, interest, claim and demand whatsover, at law or in equity, of, in, or to the same, or any part or parcel thereof, which the said party of the first part now has, holds, owns, or is entitled to, or hereafter may or shall acquire, have, hold, own, or be or become entitled to by force or virtue of the said acts of Congress; saving, excepting and reserving all parts and parcels of said lands which have been sold, or contracted to be sold or disposed of heretofore, or which are or shall be included in the right of way of the said railroads and telegraph lines of the said company, as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof, to have and to hold, all and singular, the lands hereby granted or intended to be granted and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said parties of the second part and their successors and survivor, and their assigns forever, as trustees, for the uses and purposes, and upon the trusts, terms, conditions, and agreements in this indenture set forth and declared.

Reserved Lands.

Provided, always, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid, to

Lands shall revert to and re t in the S. P. R. R. if—

the holders of said bonds, and every of them, the principal sums of money therein mentioned, according to the tenor therof, with the interest thereon, at the times and in the manner hereinbefore provided, according to the true intent and meaning of these presents, then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title and interest in any and all property hereby conveyed to the parties of the second part, not then disposed of under the powers hereby conferred, shall revert to and vest in the said party of the first part.

This indenture further witnesseth, that these presents, and the said bonds are made, executed and delivered upon the trusts, terms, conditions and agreements following, that is to say: That all the lands hereinabove conveyed and mortgaged shall be under

Land to be under the control of S. P. R. R.

the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit or terms of payment, and such other conditions as shall be agreed on by the said parties of the first and second parts, and as shall seem to them best calculated to secure the payment in full of all the bonds issued as hereinbefore provided, until entry or foreclosure by the trustees, as hereinafter provided. But no title to any tract of land, contracted to be sold by the said party of the first part, shall be given until the

Payments to be made to Trustees.

whole of the purchase money of said tract shall be paid to said parties of the second part, or their suc-

cessors or survivor, in cash or in said bonds, or overdue coupons thereof. And for this purpose it is agreed that the said party of the first part and said trustees shall cause all such lands, as they shall from time to time become subject to sale, to be carefully examined, and surveyed, and shall affix to each tract or parcel such price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who may desire to purchase and pay therefor; the prices being, nevertheless, at all times subject to revision and alteration by the said parties; and the party of the first part may reserve from sale any lands necessary for depot grounds, or other purposes connected with the construction or operation of the said railroad or telegraph.

Land to be granted, etc.

The purchaser of any such land shall be at liberty to pay for the same in the aforesaid bonds or overdue coupons at par; and when any tract or parcel of said lands shall have been purchased and paid for, either in bonds, coupons, or cash, as hereinbefore provided, the same shall be conveyed by the said parties of the first and second parts to the purchaser, in fee simple, and shall by such conveyance be absolutely and forever released from any and all lien or incumbrance, for or on account of said bonds, or any other debt or obligation of the said party of the first part.

Lands may be paid for in Bonds and overdue Coupons.

Trustees may convey land by power of attorney.

Provided, that for the sake of convenience in making said conveyances, the said trustees shall have power to act by attorney, duly nominated and appointed, by them, jointly, by letter of attorney, which shall be duly acknowledged and recorded in each and all of the counties in which said lands, or any part thereof, are situated; and all deeds made in their names by such attorney shall have the same force and effect as if made by them in person.

Residence of such attorney.

Provided, further, that the attorney so appointed shall be a resident of the city of San Francisco, in the State of California, and shall reside within convenient distance of the party of the first part.

The said trustees shall and will cancel and discharge each and every bond, and the coupons thereon, and all overdue coupons, which they may receive in payment for land, or by purchase, by defacing the seal of the corporation, perforating the signatures of the president and secretary and drawing lines across each of the interest coupons, on receipt thereof; and all bonds and coupons received in payment for lands, as aforesaid, shall, when so cancelled, be delivered to the said party of the first part.

Trustees to cancel Bonds and Coupons.

Proceeds of sales of lands shall be applied to the purchase of Bonds.

The said trustees shall apply the proceeds of the sales made by them of lands hereby conveyed, to the sole and exclusive purpose of the payment of the bonds provided for in, and issued in conformity to, the terms of this indenture.

And for such purpose all such avails shall, from time to time, as the same are realized, be used in the

How Bonds shall be purchased.

purchase of such bonds in the market, to be cancelled, so long as purchases thereof can be made at par; and whenever such bonds cannot be purchased at that rate, said trustees shall advertise for proposals to sell such bonds to them in two newspapers published in the city of New York, and one newspaper published in the city of San Francisco; and after receiving such proposals they shall have power to purchase such bonds at the lowest terms so offered.

The said party of the first part does hereby covenant and agree to pay to the holders of said bonds respectively, the said principal sums of money therein mentioned and the interest thereof as aforesaid.

If any default shall be made in the payment either of principal or interest on any of said bonds for six months, after demand at the place of payment when the same shall become due, then the said trustees may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take possession of any of the lands above conveyed, and foreclose this mortgage, and may sell at public auction so much of said lands as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deducting the costs, charges, and expenses of such entry, foreclosure and sale, to the payment of such arrears of interest. If any such default shall continue for one year from the time of such demand and refusal, the principal sum of all bonds then outstanding shall become due and payable, and the said trustes may enter into and take

In event of default in payments for six months, Trustees may foreclose mortgage and dispose of lands at public auction sufficient o discharge all arrears.

possession of all the lands above by the presents mortgaged or conveyed, foreclose this mortgage, and sell at public auction all said lands, or so much thereof as may be necessary, first giving at least six months' previous notice of the time and place of sale in at least one newspaper published in the city of New York, and in one published in each of the cities of San Francisco, Sacramento, Los Angeles and San Diego; and they shall apply the proceeds thereof, after deducting the costs, charges, and expenses of such last mentioned entry, foreclosure and sale, to the payment of all said bonds, then outstanding, and the interest accrued thereon, rendering the surplus, if any there shall be, unto the said party of the first part. In case of any sale upon any such foreclosure, or at any such public auction, the said trustees shall make, execute and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part, in and to the property so sold, to the same extent as the same shall have been previously enjoyed and held by the said party of the first part.

Foreclosure proceedings for interest to cease if interest is subsequently paid.

If, after any such entry shall be made or any such foreclosure proceedings shall be commenced for the satisfying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said trustees, and pay all the costs, charges, and expenses incurred in such entry and foreclosure and the proceedings

thereon; then and in every such case the said trustees shall discontinue their proceedings thereon, and restore to the said party of the first part all of such lands to be held subject to the above conveyance and mortgage, and subject to all the provisions, terms and conditions of these presents in like manner as if such entry had not been made, nor such foreclosure proceedings commenced. In case a vacancy shall happen in the number of trustees hereinbefore mentioned as parties of the second part in this indenture, or if one of them shall be temporarily absent, the remaining trustee shall, while said vacancy or absence exists have all the rights, exercise all the powers and discharge all the duties devolving on the said trustee by said instrument. But as soon as it conveniently may be done, such vacancy shall be filled by the nomination by the remaining trustee of some proper person to fill such vacancy, which nomination shall be submitted to the board of directors of said company, and if approved by them, the person so nominated and approved, immediately shall become a trustee under this instrument. If said nomination is not approved, another person shall be nominated by said remaining trustee, and in like manner submitted for approval, and so on till three nominations shall have been made. But if three successive nominations shall be made, and none of them shall be approved by said board, said vacancy shall be filled by a committee of three persons, selected, one by said remaining trustee, one by said board

How vacancy in Trustees is to be filled.

of directors, and a third by the two thus selected, and the person appointed trustee by a majority of the committee shall be and remain a trustee under this instrument. And the person regularly appointed a trustee to fill a vacancy in either of the forms above specified, shall, from and after his said appointment, and his acceptance of the appointment, become vested with the same estates, powers, rights and interests, and charged with the same duties and responsibilities as if he had been one of the original trustees, parties of the second part, named in and executing this instrument; and the prior remaining trustee may and shall execute such conveyances and instruments as may be proper or necessary to vest the same in such new trustee jointly with him, or to furnish evidence of such vesting. If at any time either of the said trustees shall resign his place as trustee by a proper deed in writing to that effect, and such resignation shall be accepted by the said party of the first part, then, and in every such case, the place of such resigning trustee thereupon shall become and be vacant.

Whenever all the bonds which shall have been made and issued by the said party of the first part, under and in conformity to the provisions of this indenture, with the interest thereon, together with all the expenses incurred by the said trustees in the execution of the trust herein and hereby created, shall have been fully paid or satisfied, the said trustees shall reconvey to the said party of the first part all

Reconveyance by Trustees upon payment of bonds and interest.

and singular the said lands then in the hands of the said trustees, and not before that time sold or disposed of, in the execution of the trust hereby created. In case the said trustees shall at any time have any trust moneys on hand, received from the sale of the lands hereby conveyed, which will not be required to meet any immediate liabilities of the company, to which said moneys are by these presents devoted, the said moneys shall be loaned on interest, or deposited on interest, with some bank or trust company in the city of San Francisco, or Sacramento, subject to be drawn by checks signed by the trustees, or such one of them as they may designate. All of the books of the said company, and of the trustees, relating to the lands hereby conveyed, shall be mutually open to the inspection of said company and said trustees. It shall be the duty of the said trustees to certify and deliver to the said parties of the first part the said bonds, as the same from time to time shall be demanded, issued or used by the said party of the first part.

Deposit of surplus monies by Trustees.

And it is hereby mutually agreed by and between the parties hereto, that the said parties of the second part, and their survivor and successors, and their heirs, executors and administrators, shall not be answerable for the acts, omissions or defaults of each other, nor for anything short of their own gross negligence or wilful misfeasance.

Responsibility of Trustees.

It is hereby declared by the parties to this indenture, that all the provisions of said acts of Congress,

Provisions of Acts of Congress to be observed.

so far as they are applicable, are hereby made and shall be deemed and taken to be a part of this instrument; and the said provisions in all that concerns the sale and disposal of the said lands hereby conveyed to the parties of the second part are to be observed and strictly and faithfully carried out and fulfilled.

And the said party of the first part covenants and agrees to and with the said parties of the second part, that the said party of the first part shall and will, at any and all times hereafter, and from time to time, execute, acknowledge and deliver, under its corporate seal, to the said parties of the second part, and their survivors or successors, all such other or further assurances, deeds, mortgages, obligations, transfers, indentures and instruments in writing and shall and will do and perform all such other or further acts or things, as shall or may be necessary or proper, or as their counsel, learned in the law, shall deem necessary, proper or expedient, for the better or more effectually securing upon the above conveyed and mortgaged premises the payment of the said bonds so to be issued, and the interest due and to grow due thereon in manner aforesaid, or for carrying into effect the true intent, design, objects and purposes of these presents. And the said parties of the second part hereby accept the trust created and declared by this instrument, and agree to discharge the same pursuant to the provisions in that behalf herein contained.

Will execute further instruments if necessary to secure payment of Bonds.

In witness whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its president and secretary, and sealed with its corporate seal, and the above parties of the second part have hereunto set their hands and seal, the day and year first above written.

CHARLES CROCKER,
President Southern Pacific Railroad Company.
J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

[Corporate seal S. P. R. R. Co.]

We accept the trust declared in the forgoing instrument.

D. O. MILLS, [Seal]
LLOYD TEVIS, [Seal]
Trustees.

State of California,
City and County of San Francisco. } ss.

On this third (3d) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the president of the Southern Pacific Railroad Company, and J. L. Willcutt, known to me to be the secretary of the Southern Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this third day of July, A. D. 1875.

[Notarial Seal] CHARLES J. TORBERT,

Notary public in and for the city and county of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

I, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, residing in the city of San Francisco, duly commissioned and sworn, do certify that on the sixth (6th) day of July, in the year one thousand, eight hundred and seventy-five (1875), personally appeared before me in the city and county of San Francisco, State of California aforesaid, Charles Crocker, president of the Southern Pacific Railroad Company, and J. L. Willcutt, secretary of the Southern Pacific Railroad Company, who are both personally known to me to be the said officers of the said Southern Pacific Railroad Company, respectively, and the individuals described in and who have executed the foregoing instrument as such officers of said company, and they each severally and personally, then and there, acknowledged to me that they executed the said instrument as the free act and deed of the said Southern Pacific Railroad Company freely and voluntarily, and for the uses and purposes therein mentioned; and the said J. L. Willcutt, with whom I am personally acquainted, being by me duly sworn, did depose and say that he resides in the city and county of San Francisco, State of California; that he is and was secretary of the South-

ern Pacific Railroad Company at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company, and is, and was at the date of said instrument, the legal custodian of said seal; that the seal affixed to the foregoing instrument was and is such corporate seal, and was by him so affixed by order of the board of directors of the said Southern Pacific Railroad Company; that he signed his name thereto as secretary of said company by the like order. And the said J. L. Willcutt further said that he was and is acquainted with Charles Crocker, and knows that said Charles Crocker is and was president of the Southern Pacific Railroad Company at the date of said instrument; that the signature of the said Charles Crocker subscribed to said instrument is in the genuine handwriting of the said Charles Crocker, and was thereto by him subscribed by the like order of the board of directors of said company, and in the presence of him, the said deponent.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, the sixth day of July, A. D. 1875.

[Notarial Seal] CHARLES J. TORBERT,
Notary public in and for the city and county of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this seventh (7th) day of July, in the year one thousand, eight hundred and seventy-five (1875), before me,

Charles J. Torbert, a notary public, in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared D. O. Mills and Lloyd Tevis, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, this seventh day of July, A. D. 1875.

[Notarial Seal] CHARLES J. TORBERT,
Notary public in and for the city and county of San Francisco, State of California.

Filed for record at the request of D. W. Parkhurst, and recorded in office of the county recorder of San Mateo county, July 8, 1875, at 5 P. M., in Liber 11 of Mortgages, at page 2 and following.

Witness my hand and seal of office.

GEO. H. RICE,
County recorder.
By W. R. Thomas,
Deputy.

[Seal]
Paid $22.50.

Filed for record at the request of D. W. Parkhurst, July 9, A. D. 1875, at 9 o'clock, and 26 minutes, A. M., and recorded in Book 15 of Mortgages, at page 156 *et seq.*, records of the county of Santa Clara, in the State of California.

Witness my hand and seal of office.

W. J. COLAHAN,
County recorder.
By F. J. Saxe,
Deputy.

[Seal]

Paid, $15.

Filed for record at the request of D. W. Parkhurst, July 9, A. D. 1875 at 8 o'clock, and 53 minutes P. M., and recorded in Book 1 of Mortgages, at page 586 and following. Records of San Benito county, in the State of California.

Witness my hand and seal of office.

H. M. HAYES,
Co. Recorder.

[Seal]

Fees $15, paid.

Filed for record at the request of D. W. Parkhurst, July 10, A. D. 1875, at 8 o'clock, and 10 minutes P. M., and recorded in volume 17, page 529, and following pages of the mortgage records of the county of Santa Cruz in the State of California.

Witness my hand and seal of said county recorder.

H. E. MAKINNEY,
County recorder.
In and for Santa Cruz county.

[Seal]

Paid $15.00

Filed for record at the request of D. W. Parkhurst, July 12, A. D. 1875, at 9 o'clock, and fifty-five minutes A. M., and recorded in Book 1 of Mortgages, page 183 and following, records of the county of Monterey, in the State of California.

Witness my hand and seal of office.

HERBERT MILLS,
County recorder.

[Seal]

Fees $15, paid.

Filed for record at the request of D. W. Parkhurst, July 13, 1875, at 6 o'clock, and 25 minutes, P. M., and recorded in book "C" of Mortgages, page 540 *et seq.*, records of the county of San Luis Obispo, in the State of California.

Witness my hand and seal of office county recorder.

CHARLES W. DANA,
County recorder.

[Seal]

Fees, $15.

Filed for record at the request of D. W. Parkhurst, July 14, A. D. 1875, at 2 o'clock, and 20 minutes, P. M., and recorded in Book "F" of Mortgages, pages 164 and following, records of the county of Santa Barbara, in the State of California.

Witness my hand and seal of office of county recorder.

H. P. STONE,
County recorder.
By J. O. B. Wentling,
Deputy.

[Seal]

Fees $15, paid.

Filed for record at the request of D. W. Parkhurst, July 16, A. D. 1875, at 8 o'clock, and 40 minutes, A. M., and recorded in Book 15 of Mortgages, page 600, *et seq.*, records of the county of Los Angeles, in the State of California.

Witness my hand and seal of office county recorder.

J. W. GILLETTE,
County recorder.
By D. S. Lovejoy,
Deputy.

[Seal]
Fees $15, paid.

Filed for record at the request of D. W. Parkhurst, July 19, A. D. 1875, at nine o'clock and 15 minutes, A. M., and recorded in Book, Volume 2 of Mortgages, pages 217 and following records of the county of Kern in the State of California.

Witness my hand and seal of office.

F. W. CRAIG,
County recorder.

[Seal]
Fees $15, paid.

Filed for record at the request of D. W. Parkhurst, Esq., July 20, A. D. 1875, at 8 o'clock and 15 minutes, P. M., and recorded in Book D of Mortgages, pages 310, *et seq.*, records of the county of Fresno, in the State of California.

Witness my hand and seal of office of county recorder.

A. M. CLARK,
County recorder.
By C. L. Wainwright,
Deputy.

[Seal]
Paid $15.

Filed for record at the request of D. W. Parkhurst, July 21, A. D. 1875, at 10 o'clock and 30 minutes, A. M., and recorded in Book "K" of Mortgages, page 1, *et seq.*, records of the county of Tulare, in the State of California.

Witness my hand and seal of office of county recorder.

J. E. DENNY,
Recorder.
By John G. Knox,
Deputy.

[Seal]
Paid, $15.

Filed for record at the request of D. W. Parkhurst, July 23, A. D. 1875, at 10 o'clock and 40 minutes, P. M., and recorded in Book "D" of Mortgages, 544, *et seq.*, records of the county of San Bernardino, in the State of California.

Witness my hand and seal of office of county recorder.

SYDNEY P. WAITE,
County recorder.
By R. S. Swing,
Deputy.

[Seal]
Paid, $15.00

Filed for record at the request of D. W. Parkhurst, July 26, A. D. 1875, at 10 o'clock and 20 minutes, A. M., and recorded in Book No. 7 of Mortgages, pages 103, *et seq.*, records of the county of San Diego, in the State of California.

Witness my hand and seal of office of county recorder.

A. S. GRANT,
County recorder.
By E. G. Haight,
Deputy.

[Seal]
Fees, $15.

Filed for record at the request of D. W. Parkhurst, July 28, A. D. 1875, at 24 minutes past 4 P. M., and recorded in Book No. 2 of Mortgages, pages 46, *et seq.*, records of the county of Ventura, State of California.

Witness my hand and seal of office of county recorder.

JOHN T. STOW,
County recorder.

[Seal]
Fees, $18.

Recorded at request of D. W. Parkhurst, August 3, A. D. 1875, at 1 P. M., in Liber 434 of Mortgages, page 309, in the office of the county recorder of the city and county of San Francisco, State of California.

O. H. FRANK,
County recorder.

Recorded at request of Wells, Fargo & Co., August 20, 1880 at 20 minutes past 9 A. M., in Book 1 of Mortgages, page 557, *et seq.*, records of Merced county.

E. J. HAMILTON,
County recorder.
By M. M. Walsh,
Deputy.

[Seal]
$15.

Recorded at request of Wells, Fargo & Co., August 23, A. D. 1880, at 5 minutes past 9 o'clock, A. M., in volume 15 of Mortgages, at pages 139, *et seq.*, records of Stanislaus county.

JOHN McCOY,
Recorder.

[Seal]
$15, paid.

Recorded at request of J. L. Willcutt, September 6, 1880 at 30 minutes past 10 o'clock, A. M., in Liber 624 of Mortgages, page 305, in the office of the county recorder of the city and county of San Francisco, State of California.

W. K. DEITRICH,
County recorder.
Per Richard Blauvelt,
Deputy.

[Seal]

(Marked) "Defendants' Exhibit before the special examiner No. 90, Stephen Potter, special examiner."

I hereby certify that I have compared the foregoing document with the original exhibit and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 14, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

[Endorsed]: Trust Mortgage Southern Pacific Railroad Company to D. O. Mills and Lloyd Tevis, trustees.

Dated April 1, 1875. Resignation of Lloyd Tevis and appointment of Gerrit L. Lansing. Acceptance April 18, 1883.

Defendants' Exhibit No. 91.—Deed of Trust.

(Before the Special Examiner.)

This indenture, made this twenty-fifth day of August, 1888, between the Southern Pacific Railroad Company, a railroad corporation duly organized and existing under the laws of the United States and of the State of California, party of the first part, the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky, and lessee of portions of the Southern Pacific Railroad, a party of the second part, and the Central Trust Company of New York, a corporation created, organized and existing under the laws of the State of New York, party of the third part; witnesseth:

That whereas, the Southern Pacific Railroad Company as it existed prior to the consolidation and amalgamation hereinafter set out did, to secure the payment of its bonds in the sum of $46,000,000, heretofore, to-wit, on the first day of April, 1875, make and execute its first mortgage on its entire line of railroad as then constituted, towit, on the whole of its railroad and telegraph line, running from the city of San Francisco, in the State of California, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley, and Polonio Pass, to the Colorado river at or near the Needles; also from Carnadero Junction to San

Benito; also from Los Gatos creek via Goshen to the junction with the first mentioned line, between Poso creek and Kern river; also from the junction near Tehachapi Pass via Los Angeles to the Texas Pacific Railroad, near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating eleven hundred and fifty (1,150) miles of railroad and telegraph line, more or less, and on the several sections of land granted to said Southern Pacific Railroad Company by the acts of Congress of July 27, 1866, and March 3, 1871, as stated in said mortgage, saving, excepting and reserving, however, all parts and parcels of said lands which had been sold or contracted to be sold or disposed of theretofore, or which were or should be included in the rights of way of said railroads and telegraph lines of said company, as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

And whereas, subsequent thereto by instrument in writing, dated the fourth day of May, 1888, and pursuant to the laws of the State of California, in such cases made and provided, the San Jose and Almaden Railroad Company, the Pajaro and Santa Cruz Railroad Company, the Monterey Railroad Company, the Monterey Extension Railroad Company, the Southern Pacific Branch Railway Company, the San Pablo and Tulare Extension Railroad Company, the San Ramon Valley Railroad Company, the Stockton and Copperopolis Railroad Company, the Stockton and Tulare Railroad Company, the San Joaquin Valley and Yosemite Railroad

Company, the Los Angeles and San Diego Railroad Company, the Los Angeles and Independence Railroad Company, the Long Beach, Whittier and Los Angeles County Railroad Company, the Long Beach Railroad Company, the Southern Pacific Railroad Extension Company and the Ramona and San Bernardino Railroad Company (railroad corporations organized and existing under the laws of the State of California) amalgamated and consolidated their capital stocks, debts, properties, assets and franchises with the capital stock, debts, properties, assets, and franchises of the Southern Pacific Railroad Company of California.

And whereas, by force and effect of said amalgamation and consolidation, the said party of the first part has succeeded to all of the debts, properties, assets and franchises of said several railroad companies, and now holds and owns the said several lines of railroad heretofore owned and held by them respectively, together with their respective properties, assets and franchises.

And whereas, the said Pajaro and Santa Cruz Railroad Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of five hundred and thirty (530) of its thirty-year first mortgage bonds of one thousand dollars each, bearing date the first day of January, 1885, bearing interest at the rate of six per cent per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the first day of January, 1885, to S. T. Gage and E. R. Ryan, and covering its railroad, commencing at the town of Pajaro, in the county of Monterey, in the State

of California, and extending thence to the city of Santa Cruz, in the county of Santa Cruz, in said State, with a branch line commencing at the town of Aptos, in said county of Santa Cruz, and running thence in a northerly and northeasterly direction, following the meanders of Aptos creek to the point of confluence of said creek with the creek running from White's Lagoon, a distance of twenty-six miles, as near as may be, together with all its corporate rights, its appurtenances, etc.

And whereas, the said Monterey Railroad Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of two hundred and fifty (250) of its twenty-year first-mortgage bonds of one thousand dollars each, bearing date the first day of April, 1880, bearing interest at the rate of five per cent per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the ninth day of March, 1880, to Stephen T. Gage and E. B. Ryan, and covering the whole of the railroad line of same company, commencing at or near the town of Castroville, in the county of Monterey, in the State of California, and running through the county of Monterey, to a point at or near the city of Monterey in said county, a distance of fifteen and four-tenths (15.4) miles, together with all its corporate rights, its appurtenances, etc.

And whereas, the said Southern Pacific Branch Railway Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of nine thousand of its fifty-year first-mortgage bonds of one thou-

sand dollars each, bearing date the first day of April, 1887, bearing interest at the rate of six per cent per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the twenty-fourth day of November, 1886, to William E. Brown and Gerrit L. Lansing, and covering the whole of the railroad line of the said company, commencing at a point near San Miguel, in the county of San Luis Obispo, in the State of California, there connecting with the railroad of the Southern Pacific Railroad Company, and running from thence in a general southeasterly direction through and into the counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to a connection with the railroad of the Southern Pacific Railroad Company, near Newhall, in said Los Angeles county, a distance of about two hundred and fifty miles, as near as may be, together with all the corporate rights pertaining to said road, its appurtenances, etc.

And whereas, the said San Pablo and Tulare Railroad Company to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of three thousand, seven hundred and fifty (3,750) of its thirty-year first mortgage bonds of one thousand dollars each, bearing date the first day of April, 1878, bearing interest at the rate of six per cent per annum, payable semi-annually, secured by mortgage or deed of trust, bearing date the second day of September, 1878, to Albert Gallatin and Charles Miller, and covering its line of railroad, constructed and unconstructed, running from a

point at or near Martinez, in the county of Contra Costa, through the counties of Contra Costa, San Joaquin, Stanislaus, Merced and Fresno to a point at or near Los Gatos creek, a distance of one hundred and fifty (150) miles, as near as may be, with all rolling stock, appurtenances, etc.

And whereas, the said Los Angeles and San Diego Railroad Company, to aid in the construction of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of two thousand eight hundred (2,800) of its thirty-year first mortgage bonds of one thousand dollars each, bearing date the first day of July, 1880, with interest at the rate of six per cent per annum, payable semi-annually, secured by a mortgage or deed of trust bearing date the second day of December, 1880, to S. T. Gage, and E. B. Ryan, and covering its railroad line constructed and unconstructed, from the city of Los Angeles, in a southerly direction, to the city of San Diego, in the southwestern part of the State of California, with all rolling stock, appurtenances, etc., a distance of 140 miles, as near as may be.

And whereas, there are now outstanding $530,000 of said Pajaro and Santa Cruz Railroad Company's bonds; $220,000 of said Monterey Railroad Company's bonds (the balance of $30,000 having been redeemed, canceled and retired); $3,145,000 of said Southern Pacific Branch Railway Company's bonds (the balance, $5,855,000 being unissued and in the hands of the party of the first part); $1,023,000 of said San Pablo and Tulare Railroad Company's bonds (the balance $2,727,000 being unissued

in the hands of the party of the first part); and $556,000 of the said Los Angeles and San Diego Railroad Company's bonds (the balance $2,244,000, being unissued and in the hands of the party of the first part.)

And whereas, said mortgages and each of them are valid and subsisting liens upon the lines of railroad heretofore described, and now the property of the party of the first part.

And whereas, the owners of all the outstanding bonds heretofore issued as aforesaid by the Pajaro and Santa Cruz Railroad Company, the Monterey Railroad Company, the San Pablo and Tulare Railroad Company, and the Los Angeles and San Diego Railroad Company, are willing to surrender said bonds and permit the respective mortgages heretofore made to secure the payment thereof and hereinbefore described, to be satisfied of record and canceled, and receive in lieu thereof new fifty-year five per cent bonds secured by this mortgage.

And whereas, the party of the first part desires and intends to redeem and take up said mortgage bonds issued by said constituent companies, towit: The outstanding mortgage bonds of the Pajaro and Santa Cruz Railroad Company in the sum of $530,000, the outstanding mortgage bonds of the Monterey Railroad Company in the sum of $220,000, the outstanding mortgage bonds of the San Pablo and Tulare Railroad Company in the sum of $1,023,000, and the outstanding mortgage bonds of the Los Angeles and San Diego Railroad Company in the sum of $556,000, and retire the same, and to destroy, cancel and retire the unissued bonds of the San

Pablo and Tulare Railroad Company in the sum of $2,727,000, and the unissued bonds of the Los Angeles and San Diego Railroad Company in the sum of $2,244,000, and cause said existing mortgages to be satisfied of record and canceled; and as rapidly as the same can be done, upon terms satisfactory to the party of the first part to arrange for the redemption of the mortgage bonds, issued by said Southern Pacific Branch Railway Company, and when arrangements have been made for the redemption of all of such bonds to cause the same to be canceled, and the mortgage securing the same to be satisfied of record; and in lieu of said outstanding bonds, to issue new fifty-year five per cent bonds secured by this mortgage, and said party of the first part desires and intends to pay off and discharge the floating debt incurred in the construction and completion of certain portions of its lines of railroad, and desires to complete the construction and equipment thereof, and to that end desires and intends to issue its bonds in an amount necessary to accomplish said objects and purposes, and to secure the payment thereof by mortgage upon certain of its constituent lines of railroad hereinafter more particularly described.

And, whereas, heretofore, towit, on the twenty-first day of August, 1888, the board of directors of said Southern Pacific Railroad Company, at a meeting of said board, at which all the members thereof were present, by a resolution to that effect, which was unanimously adopted, passed and concurred in, did determine and direct that bonds of said company be prepared, executed and issued in its name, and under its corporate seal,

and signed by its president and secretary, to bear date the first day of October, 1888, in the sum of one thousand dollars each, to the number of thirty-eight thousand, numbered from one to thirty-eight thousand inclusive, payable to the Central Trust Company of New York, or to the bearer thereof, fifty years after date, with interest at the rate of five per cent per annum, payable semi-annually, on the first days of April and October of each year ensuing its date, payable both principal and interest in United States gold coin in the city of New York.

And whereas, the board of directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further order and direct that said bonds should be drawn in substantially the following form, towit:

$1,000 United States of America. $1,000.

Southern Pacific Railroad Company, (of California)

First Mortgage Five Per Cent Gold Bond.

The Southern Pacific Railroad Company (of California) acknowledges itself indebted to the Central Trust Company of New York, of to the bearer hereof, in the sum of one thousand dollars gold coin of the United States, which sum it promises to pay to the bearer hereof, or, if registered, to the registered holder hereof, fifty years after date, and it further promises that, on presentation and surrender at or after maturity of the respective interest coupons hereunto annexed, it will pay to the person presenting the same, or, if this bond is reg-

istered and the interest coupons appertaining thereto canceled, it will pay to the registered holder hereof, interest on such principal sum at the rate of five per cent per annum semi-annually, on or after the first day of April and October of each year ensuing the date hereof, both principal and interest payable at the office or agency of the company in the city of New York, in United States gold coin.

This is one of the first mortgage bonds issued under and secured by the indenture of mortgage or deed of trust from this company to the Central Trust Company of New York, trustee, dated the twenty-fifth day of August, 1888.

None of said bonds are to be in anywise binding or obligatory unless authenticated by a certificate endorsed thereon, signed by said trustee or its successor or successors in said trust.

This bond may at any time, upon production thereof to said Railroad Company, and proper endorsement being made thereon, and either with or without the surrender to said railroad company for cancellation of all unpaid interest coupons appertaining thereto, be registered upon the books of the company in the name of the holder thereof, and thereupon its transferability by delivery will cease, and thereafter it can be transferred only by the registered holder or his attorney by transfer duly made upon said books.

In witness whereof, the said Southern Pacific Railroad Company has caused its corporate seal to be hereunto affixed, and this bond to be signed by its president and

ary, this first day of October, one thousand eight hundred and eighty-eight.

SOUTHERN PACIFIC RAILROAD COMPANY,

President.

Secretary.

And whereas, the said board of directors, at the meeting aforesaid, and in the manner and form and by the vote aforesaid, did further direct that to each of said bonds there should be attached one hundred interest coupons, numbered respectfully from one to one hundred, inclusive, substantially in the following form, to-wit:

$25. (Coupon.) $25.

Southern Pacific Railroad Company (of California).

First Mortgage Five Per Cent Gold Bond, No. ——.

Interest coupon for twenty-five dollars, due ——— payable in the city of New York, in United States gold coin.

Coupon No. ——. ————, Treasurer.

And that all such coupons should bear the impression of the engraved signature of the treasurer, which impression should be regarded and treated, in fact and in law, as equivalent to a manual signing by said officer.

And whereas, the said board of directors, at the meeting aforesaid, and in manner and form and by the vote aforesaid, did further direct that, to secure the payment of said bonds, a mortgage upon certain of its constituent lines of railroad and telegraph, and upon certain of its lands, should be executed in its name and under its corporate seal, and be signed by its president

and secretary, to the Central Trust Company of New York, as trustee, for the holders of said bonds, said mortgage to cover the railroad and telegraph line, rolling stock, stations, fixtures and franchises held, owned and possessed by it in the following constituent lines of railroad, all lying within the State of California.

First.—Running from Hillsdale to the town of New Almaden, all in Santa Clara county, being seven and eight-tenths (7.8) miles in length, more or less.

Second.—Running from Pajaro in Monterey county to Santa Cruz in Santa Cruz county; also, running from Aptos in said Santa Cruz county, northerly and northeasterly about five miles, being twenty-six and two-tenths (26.2) miles in length, more or less.

Third.—Running from a point at or near Castroville station in Monterey county to a point at or near Monterey in said county thence northwesterly to a point at or near Pacific Grove Retreat; and thence southwesterly to a point near the mouth of the Carmel river, an estimated length of thirty-one and twelve-hundredths (31.12) miles.

Fourth.—Running from a point near San Miguel in San Luis Obispo county, in the State of California, there connecting with the railroad of the Southern Pacific Railroad Company; and running from thence in a general southeasterly direction through and into the counties of San Luis Obispo, Santa Barbara, Ventura, and Los Angeles, to a connection with the railroad of the Southern Pacific Railroad Company in said Los Angeles county near Newhall, being about two hundred and fifty (250) miles in length.

Fifth.—Running from a point near Martinez in Contra Costa county to Tracy in San Joaquin county, a distance of forty-seven and fifty-eight hundredths (47.58) miles, more or less; running thence from Tracy through the counties of San Joaquin, Stanislaus, Merced, Fresno, and Tulare, to a connection with the San Joaquin division of the railroad of the party of the first part at or near Pampa, in the county of Kern, a distance of two hundred and sixty miles, more or less, and aggregating three hundred and seven and fifty-eight hundredths (307.58) miles, more or less.

Sixth.—Running from a point at or near Avon in Contra Costa county to a point on the Central Pacific Railroad at or near Pleasanton, in the county of Alameda, a distance of thirty-five (35) miles, more or less.

Seventh.—Running from a point at or near Oakdale in Stanislaus county, through and into the counties of Stanislaus, Merced, Fresno, and Tulare, to a point at or near the town of Poso, in Kern county, a distance of two hundred (200) miles, more or less, with branches connecting with the Central Pacific Railroad to or near Modesto in Stanislaus county, a distance of sixteen (16) miles, more or less, to or near Merced, in Merced county, a distance of ten (10) miles, more or less, to or near Sycamore, in Fresno county, a distance of ten (10) miles, more or less, to or near Fresno, in Fresno county, a distance of ten (10) miles, more or less, with a branch to or near Tulare, in Tulare county, there connecting with the San Joaquin division of the railroad of the party of the first part, a distance of sixteen (16) miles, more or less; said line and

branches being two hundred and sixty-two (262) miles in length, more or less.

Eighth.—Running from Berenda Station in Fresno county to a point at or near Perry's Ranch in said county, a distance of twenty-five (25) miles, more or less.

Ninth.—Running from a point at or near the city of Los Angeles, in the county of Los Angeles, to the towns of Anaheim and Santa Ana in said county; and thence through the counties of Los Angeles and San Diego, to a point at or near the city of San Diego, in said last mentioned county, a distance of one hundred and forty (140) miles, more or less.

Tenth.—Running from a point at or near the city of Los Angeles to Santa Monica, in Los Angeles county, a distance of eighteen and fifty-hundredths (18.50) miles, more or less.

Eleventh.—Running from a point at or near Long Beach, in Los Angeles county, to Whittier; thence to Ramona, a distance of thirty (30) miles, more or less; also running from a point at or near Los Angeles to a point on the main line of the railroad of the party of the first part between El Monte and Puente, and then northeasterly to a point on or near San Dimos creek, a distance of thirty (30) miles, more or less, al in said county of Los Angeles, and aggregating sixty (60) miles in length, more or less.

Twelfth.—Running from a point at or near Long Beach Junction, in Los Angeles county, to the town of Long Beach; thence easterly to the boundary line between the Ranchos Los Cerritos and Los Alamitos, in said county, a distance of four (4) miles, more or less.

Thirteenth.—Running from a point on the line of the Wilmington division of the railroad of the party of the first part, between the towns of Wilmington and San Pedro, in the county of Los Angeles, through said town of San Pedro to a point at or near Point Fermin; thence westerly through the lands of the San Pedro Harbor, Dock, and Land Association to the westerly boundary of said lands, all in the county of Los Angeles, and being five (5) miles in length, more or less.

Fourteenth.—Running from a point at or near Ramona, in Los Angeles county, to a point at or near Crafton, in San Bernardino county, a distance of seventy-one (71) miles, more or less.

Fifteenth.—Running from the city of San Francisco, in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley, and Polonio Pass to Mojave Junction; also from Carnadero Junction to San Benito; also from Los Gatos Creek, via Goshen, to the junction with the first-mentioned line between Poso Creek and Kern river; also from the junction near Tehachipi Pass, via Los Angeles, to Yuma, in the county of San Diego; and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating nine hundred and eight miles of railroad and telegraph line, or thereabouts.

And also to cover the lands granted to the Southern Pacific Railroad Company by the acts of Congress of July 27, 1866, and March 3, 1871, above referred to, not sold or contracted to be sold or disposed of prior to the execution of this mortgage, or included in the right of way of the railroads and telegraph lines of the said company,

or used, or to be used for the construction or operation thereof, or for the track, yards, depot grounds, buildings, or erections thereof.

And whereas, said board of directors at the meeting aforesaid and in the manner and form, and by the vote aforesaid, did further direct that a sinking fund should be created for the redemption and payment of said bonds by setting apart the sum of twenty thousand dollars of the net income derived by said company from the constituent lines of railroad herein mortgaged in the year 1898, and in each year thereafter, until all of said bonds, principal and interest, shall be redeemed or paid in trust, to be loaned out at interest upon good securities, or otherwise invested, under the order and direction of said board of directors, or used to redeem said bonds as often as twenty thousand dollars shall come into the sinking fund; in which case notice shall be published in one daily paper in the city of New York, and one daily paper in the city of San Francisco, for such length of time as the board of directors may order, that said bonds will be redeemed, and inviting bids for the surrender thereof at prices to be named, the lowest bids to be accepted, and bonds redeemed to the extent of the money in the sinking fund.

And whereas, the Southern Pacific Company, party of the second part herein, and lessee of certain portions of the railroads of the party of the first part affected by this mortgage, has been in writing notified and informed of this mortgage, and has, in writing, by order of its board of directors, given its consent thereto, and as an evidence of such consent has become a party hereto.

Now, therefore, this indenture witnesseth: That the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds, and the interest thereon, and in consideration of the sum of one dollar to the said party of the first part, in hand paid by the party of the third part, the receipt whereof is hereby acknowledegd, has granted, bargained, sold, released, enfeoffed, conveyed, and confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey and confirm unto the said party of the third part, as trustee, and to its successors and assigns forever, the following property, now and hereafter constructed, purchased, acquired, held in possession and owned by said party of the first part, towit:

Its constituent lines of railroad lying within the State of California and running:

First.—From Hillsdale to the town of New Almaden, all in Santa Clara county, being seven and eight-tenths (7.8) miles in length, more or less.

Second.—From Pajaro in Monterey county to Santa Cruz, in Santa Cruz county; also running from Aptos in said Santa Cruz county, northerly and northeasterly about five (5) miles; being twenty-six and two-tenths (26.2) miles in length, more or less.

Third.—From a point at or near Castroville Station in Monterey county, to a point at or near Monterey in said county; thence northwesterly to a point at or near Pacific Grove Retreat, and thence southwesterly to a point near the mouth of Carmel river, an estimated length of thirty-one and twelve hundredths (31.12) miles.

Fourth.—From a point near San Miguel, in San Luis Obispo county, in the State of California, there connecting with the railroad of the Southern Pacific Railroad Company, and running from thence in a general southeasterly direction through and into the counties of San Luis Obispo, Santa Barbara, Ventura, and Los Angeles, to a connection with the railroad of the Southern Pacific Railroad Company in said Los Angeles county near Newhall, being about two hundred and fifty (250) miles in length.

Fifth.—From a point at or near Martinez in Contra Costa county to Tracy in San Joaquin county, a distance of forty-seven and fifty-eight hundredths (47.58) miles, more or less; thence from Tracy through the counties of San Joaquin, Stanislaus, Merced, Fresno, and Tulare, to a connection with the San Joaquin division of the railroad of the party of the first part at or near Pampa, in the county of Kern, a distance of two hundred and sixty (260) miles, more or less, and aggregating three hundred and seven and fifty-eight hundredths (307.58) miles, more or less.

Sixth.—From a point at or near Avon, in Contra Costa county, to a point on the Central Pacific Railroad at or near Pleasanton, in the county of Alameda, a distance of thirty-five miles, more or less.

Seventh.—From a point at or near Oakdale in Stanislaus county through and into the counties of Stanislaus, Merced, Fresno, and Tulare to a point at or near the town of Poso in Kern county, a distance of two hundred (200) miles more or less, with a branch connecting with the main line of the Central Pacific Railroad to or near Mo-

desto in Stanislaus county, a distance of sixteen (16) miles more or less, a branch to or near Merced in Merced county, a distance of ten (10) miles, more or less, a branch to or near Sycamore in Fresno county, a distance of ten (10) miles, more or less, a branch to or near Fresno in Fresno county, a ..... distance of ten (10) miles, more or less, a branch to or near Tulare, in Tulare county, there connecting with the San Joaquin division of the railroad of the party of the first part, a distance of sixteen (16) miles, more or less; said line and branches being two hundred and sixty-two (262) miles in length more or less.

Eighth.—From Berenda Station in Fresno county to a point at or near Perry's ranch in said county, a distance of twenty-five (25) miles, more or less.

Ninth.—From a point at or near the city of Los Angeles, in the county of Los Angeles, to the towns of Anaheim and Santa Ana in said county, and thence through the counties of Los Angeles and San Diego to a point at or near the city of San Diego, in said last-mentioned county, a distance of one hundred and forty (140) miles, more or less.

Tenth.—From a point at or near the city of Los Angeles to Santa Monica in Los Angeles county, a distance of eighteen and fifty hundredths (18.50) miles, more or less.

Eleventh.—From a point at or near Long Beach in Los Angeles county to Whittier, thence to Ramona, a distance of thirty (30) miles, more or less; also running from a point at or near Los Angeles to a point on the main line of the railroad of the party of the first part between

El Monte and Puente, and thence northeasterly to a point on or near San Dimos creek, a distance of thirty (30) miles, more or less, all in said county of Los Angeles, and aggregating sixty (60) miles in length, more or less.

Twelfth.—From a point at or near Long Beach Junction in Los Angeles county to the town of Long Beach; thence easterly to the boundary line between the Ranchos Los Cerritos and Los Alamitos in said county, a distance of four (4) miles, more or less.

Thirteenth.—From a point on the line of the Wilmington division of the railroad of the party of the first part between the towns of Wilmington and San Pedro, in the county of Los Angeles, through said town of San Pedro to a point at or near Point Fermin, thence westerly through the lands of the San Pedro Harbor, Dock and Land Association to the westerly boundary of said lands, all in the county of Los Angeles, and being five (5) miles in length, more or less.

Fourteenth.—From a point at or near Ramona in Los Angeles county to a point at or near Crafton in San Bernardino county, a distance of seventy-one (71) miles, more or less.

Fifteenth. From the city of San Francisco in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley, and Polonio Pass to Mojave Junction; also from Carnadero Junction to San Benito; also from Los Gatos Creek via Goshen to the junction with the first-mentioned line between Poso Creek and Kern river; also from the junction near Tehachapi Pass via Los Angeles to Yuma, in the county of San Diego; also from Los Angeles to Wilmington on San Pedro bay,

aggregating nine hundred and eight (908) miles of railroad and telegraph line or thereabouts.

Including all the rights of way, roadway, track and tracks, together with all the superstructures, depots, depot grounds, station houses, watering places, side tracks, turnouts, turntables, weighing scales, locomotives, tenders, cars, rolling stock of all kinds, equipments, fixtures, tools, telegraph lines, and all other property which may now or hereafter be acquired for the purpose of operating the constituent lines of railroad hereby mortgaged, including all of the said property which now is or may hereafter, in whole or in part, be constructed or completed, purchased, acquired, held or owned by the said company pertaining to that portion of said lines of railroad hereby mortgaged, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging and appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues, and profits thereof, with all the rights, titles, interest, estate, property, succession, claim, and demand, in law or equity of the said party of the first part of, in, and to the same or any part or parcel thereof.

Also all and singular the several sections of land so as aforesaid granted by said acts of Congress, and also all the estate, right, title, interest, claim, and demand whatsoever, at law or in equity of, in, or to the same, or any part or parcel thereof, which said party of the first part now has, holds, owns, or is entitled to, or hereafter may or shall acquire, have, own, or be or become entitled to, by force or virtue of the said acts of Congress, saving, excepting, and reserving all parts and parcels of said

lands which have been sold or contracted to be sold or disposed of heretofore, or which are or shall be included in the right of way of the railroads and telegraph lines of the said company, as defined and granted by the acts of Congress aforesaid, or used for the construction and operation thereof, or for the track, yards, depot grounds, buildings, or erections thereof.

To have and to hold the above granted and described premises, property, and franchises, with the appurtenances, unto the said party of the third part, and to its successors duly appointed, upon trust and for the use and benefit of the person or persons, body or bodies, politic or corporate, who shall have become or be from time to time holders of the said first mortgage bonds secured hereby, or any of them.

Provided, always, and these presents are upon the express condition that if the said party of the first part, or its successors, shall well and truly pay or cause or procure to be paid unto the holders, from time to time, of said bonds, and each and every one of them, the said sums of money secured to be paid by the said bonds, and the interest coupons attached thereto, at the places and times, and in the manner set forth in the said bonds, according to the true intent and meaning thereof, then these presents, and the property, estate, rights, franchises and privileges herein and hereby granted and conveyed shall cease, determine, and be void.

Until default shall be made by the said party of the first part, its successors and assigns, in the payment of the principal or interest of the said bonds or some of them, or some part thereof, as hereinafter provided, the

said party of the first part, its successors and assigns, shall be suffered and permitted to possess and enjoy the said premises, with their appurtenances and all and singular the rights and franchises hereinbefore described, and to receive, take, and use the tolls, income, earnings, and profits thereof, and the trustee or trustees hereunder shall have full power in its or their discretion, upon written request of the party of the first part, its successors, or assigns, to convey, by way of release or otherwise, and fully release from the lien of this mortgage, any lands or other property of any description (except only the lands granted by acts of Congress, as hereinbefore prescribed), which in its or their judgment shall not be necessary for or for use in connection with the said railroads, and to consent to such changes in the location of tracks, depots, and other buildings as in its or their judgment may be expedient, and to make and deliver the releases and conveyances necessary to carry the same into effect, but any lands or other property which may be acquired for permanent use in substitution for any so released or conveyed, shall thereupon become subject to the lien of this mortgage, and upon request of the trustee or trustees hereunder, shall be conveyed to it or them by the party of the first part, its successors or assigns, upon the trusts of these presents.

But if default shall be made in the payment of the said sums of money specified in said bonds, or in the payment of said interest coupons, or either of them, or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the same should have been paid according to the terms of

said bonds, then the said party of the third part, or its successor in said trust, by itself or its agents or servants, in that behalf, upon request of the holder or holders of not less than one-fourth of said bonds then outstanding, on which the interest or principal shall be and have so remained in default as aforesaid, enter into and upon and take possession of all, or in its or their discretion any part of, the said constituent lines of railroad hereby mortgaged, and work and operate the said constituent lines of railroad, and receive the income, receipts, and profits thereof and out of the same pay:

First.—The expense of running and operating the same, including therein reasonable counsel fees and such reasonable compensation as it may allow to the several persons employed or engaged in the running and superintendence of the same.

Second.—The expense of keeping the said roads, the appurtenances, the locomotives, and rolling stock thereof in good and sufficient repair to prevent the deterioration in the value thereof, and all other reasonable and proper charges and expenses of the care and management thereof; and

Third.—Pay, as far as the same will suffice, all interest and principal, if any, which may be due on said bonds, and in case of any deficiency apply the said receipts, after the payment of all said charges and expenses to the payment thereof, ratably, without preference of any kind.

Or the said party of the third part may, in case of default as aforesaid, and upon request as aforesaid, foreclose this mortgage and sell and dispose of, according to law, all of the constituent lines of railroad hereby mort-

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~1380~~ 18

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, TRUSTEES, AND THE CENTRAL TRUST COMPANY, OF NEW YORK,

Appellants,

VS.

THE UNITED STATES OF AMERICA,

Appellee.

VOLUME V

(PAGES 1749 to 2204 Inclusive)

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 494

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, Trustees, AND THE CENTRAL TRUST COMPANY, OF NEW YORK,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

VOLUME 5

(PAGES 1749—2204 Inclusive.)

Appeal from the Circuit Court of the United States for the Southern District of California.

gaged, together with all of the rights, property, privileges, franchises, real and personal connected therewith or pertaining thereto that are subject to this mortgage, with the appurtenances herein and hereby granted, or so much as may be necessary, and out of the money arising from such sale, pay:

First.—The cost and charges and expenses of the foreclosure and sale.

Second.—Any expenses, costs, and charges of the execution of the trust previously incurred and remaining unpaid; and

Third.—Distribute the residue of said proceeds among the holders of said bonds and coupons in proportion to their several interests, until all have been paid in full, principal and accrued interest.

If any default shall be made in the payment of interest on any of said bonds for six months, after demand at the place of payment, when the same shall become due, then the said trustee may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take possession of any of the lands above conveyed, and foreclose this mortgage therein, and may sell at public auction upon like notice as hereinafter prescribed, so much of said lands as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deducting the costs, charges, and expenses of such entry, foreclosure and sale, to the payment of such arrears of interest. If any such default shall continue for one year from the time of such demand and refusal, the principal sum of all bonds then outstanding shall become due and payable, and thereupon or upon default

in the payment of the principal of such bonds at their maturity, the said trustee may enter into and take possession of all the lands above by these presents mortgaged or conveyed, foreclose this mortgage thereon and sell at public auction all said lands or so much thereof as may be necessary, first giving at least six months' previous notice of the time and place of sale in at least one newspaper published in the city of New York, and in one published in each of the cities of San Francisco, Sacramento, Los Angeles, and San Diego, and they shall apply the proceeds thereof, after deducting the costs, charges, and expenses of such last-mentioned entry, foreclosure and sale, to the payment of all said bonds, then outstanding, and the interest accrued thereon, rendering the surplus, if any there shall be, unto the said party of the first part.

In case of any sale upon any such foreclosure or at any such public auction, the said trustee shall make, execute, and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part, in and to the property so sold, to the same extent as the same shall have been previously enjoyed and held by the said party of the first part.

If, after any such entry shall be made or any foreclosure proceedings shall be commenced, for the satisfying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said trustee, and pay all the costs, charges, and expenses incurred in such entry and foreclosure and the

proceedings thereon; then and in every such case the said trustee shall discontinue its proceedings thereon, and restore to said party of the first part all of such lands to be held subject to all the provisions, terms, and conditions of these presents, in like manner as if such entry had not been made, nor such foreclosure proceedings commenced.

All lands granted or conveyed under the acts of Congress hereinbefore referred to and in anywise covered or affected by the provisions hereof shall be subject to the express provision that if and so long as the bonds issued under and secured by the said indenture of mortgage to D. O. Mills and Lloyd Tevis, dated April 1, 1875, or any thereof, shall remain outstanding, any and all sales made in the manner in said last-mentioned indenture of mortgage prescribed, shall absolutely and forever release the said lands from any and all lien or encumbrance of, under, or in respect of this mortgage or the bonds issued thereunder; and if and when all the bonds issued under said indenture of mortgage of April 1, 1875, shall have been fully satisfied and discharged, and the lien of such last-mentioned indenture of mortgage upon such lands fully released, then the said lands so far as they remain unsold at that time shall be subject to the like provisions in respect to sale and conveyance, and release from the lien of this mortgage as are in said mortgage of April 1, 1875, prescribed in respect to sale, and conveyance, and release from the lien thereof.

This indenture further witnesseth, That said party of the first part hereby agrees and covenants to and with said party of the third part that it will create a sinking

fund for the redemption and payment of said bonds, by setting apart the sum of twenty thousand dollars of the net income derived by it from the constituent lines of railroad herein mortgaged, in the year 1898, and in each year thereafter, until all of said bonds, principal and interest, shall be redeemed or paid, in trust, to be loaned out at interest upon good securities, or otherwise invested under the order and direction of the board of directors of the party of the first part, or used to redeem said bonds as often as twenty thousand dollars shall come into the sinking fund; in which case notice shall be published in one daily paper in the city of New York, and one daily paper in the city of San Francisco for such length of time as said board of directors may order, that said bonds will be redeemed, and inviting bids for the surrender thereof, at prices to be named, the lowest bids to be accepted, and bonds redeemed to the extent of the money in the sinking fund.

And this indenture further witnesseth, That the said party of the first part hereby agrees and covenants to and with the said party of the third part, and its successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be legally imposed upon the property herein described and hereby mortgaged, and every part thereof, and the said party of the third part, or its successors in said trust, or any one or more of the holders of said bonds, may in case of default of the said party of the first part in this behalf, pay and discharge the same, and any other lien or encumbrance upon said property which may in any way, either in law of equity, be or be-

come in effect a charge or lien thereon prior to these presents, or to which this mortgage may be subject or subordinate, and for all payments thus made, the parties so making the same shall be allowed interest thereon at the rate of six per cent per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents, and declared to be payable and collectible in the same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said party of the third part, upon demand, in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises hereinbefore provided.

And this indenture further witnesseth, That the said party of the first part further covenants and agrees to and with the said party of the third part, and its successors in said trust, that it will at any and all times hereafter upon the request of the said party of the third part, execute, acknowledge, and deliver to the said party of the third part and its successors in said trust, all and every such further necessary and reasonable conveyances and assurances of the said premises, or any part thereof as may by the party of the third part or its successors in the trust hereby created, be reasonably advised or required for more fully carrying into effect the objects of this conveyance.

And the said party of the third part and its successors in said trust shall be entitled to receive a just and proper compensation for all services rendered by it or them in the discharge of said trust, and the same shall be deemed

to be secured hereby. And it is hereby stipulated and agreed that the said party of the third part and its successors in said trust shall not be responsible for the acts or omissions of any agent or agents employed by it or them in any manner in and about the execution of the trust hereby created, when such agent or agents are selected with reasonable discretion, or with the approbation or with the knowledge and without the express disapprobation of said party of the first part.

This indenture further witnesseth, That should the said party of the third part for any reason fail, refuse, or become incompetent to discharge the duties or trusts herein conveyed to, imposed on, and accepted by it, then and in that event the board of directors of the party of the first part shall nominate and appoint a successor or successors to said party of the third part, which said successor or successors shall be vested with the same properties and clothed with the same powers, rights, and duties, and be subject to the same obligations as the said party of the third part named herein, as fully as though he, they, or it had been named herein as such trustee or trustees.

And this indenture further witnesseth, That the party of the first part hereby agrees to take up, pay off, discharge, and retire the outstanding bonds of the Pajaro and Santa Cruz Railroad Company in the sum of five hundred and thirty thousand dollars ($530,000); the outstanding bonds of the Monterey Railroad Company, in the sum of two hundred and twenty thousand dollars ($220,000); the outstanding bonds of the San Pablo & Tulare Railroad Company, in the sum of one million and twenty-three

thousand ($1,023,000) dollars; and the outstanding bonds of the Los Angeles and San Diego Railroad Company, in the sum of five hundred and fifty-six thousand ($556,000) dollars, and to destroy, cancel, and retire all of said bonds unissued and in its hands, and cause said existing mortgages to be satisfied of record and canceled, and to take up said outstanding bonds with the new fifty-year five per cent bonds to be issued under this mortgage, upon such terms as may be agreed upon, said redemption and cancellation and satisfaction to be made without unnecessary delay.

It is further provided, covenanted, declared, and agreed that the party of the third part and its successors in the trust hereby created is and are from time to time to authenticate and certify as issued hereunder and deliver to the party of the first part, its successors or assigns, first mortgage bonds in the form, or substantially the form, above prescribed, to amounts which shall aggregate, but shall not exceed, twenty-two thousand five hundred dollars par value of such bonds per mile for each mile of road constructed or acquired by the said party of the first part, its successors or assigns, and described in the foregoing thirteen subdivisions hereof designated from "First" to "Third," both inclusive, and from "Fifth" to "Fourteenth," both inclusive, and for twenty-five miles in addition thereto; and to further amounts not exceeding seven thousand five hundred dollars per mile additional thereto for expenses and disbursements incurred in and about double tracking, masonry, iron bridges, rolling stock or other betterments or improvements either to the permanent way, local or terminal facilities or rolling

stock. The said party of the third part, and its successors in the trust hereby created, is and are also from time to time to authenticate and certify as issued hereunder, and deliver to the party of the first part, its successors and assigns, additional first mortgage bonds in the form or substantially the form above prescribed to the amounts to which bonds of the Southern Pacific Branch Railway Company issued, or to be issued under and secured by the mortgage of November 24, 1886, hereinbefore referred to, shall have been deposited with the trustee hereunder.

All bonds so deposited with the trustee hereunder shall be held as collateral security for the bonds issued under this mortgage until all of the bonds issued under and secured by such mortgage of the Southern Pacific Branch Railway Company shall have been so deposited, whereupon such deposited bonds shall be canceled and the mortgage securing the same shall be satisfied of record. While such Southern Pacific Branch Railway Company's bonds remain so on deposit with the trustee, neither such bonds nor the coupons appertaining thereto shall be required to be paid unless proceedings shall be taken for the foreclosure of the mortgage securing the same, in which case all the bonds and coupons which shall have been so deposited with the trustee shall be entitled to share, for the benefit of the bonds issued under this mortgage, on equal terms with the other bonds issued under and secured by said Southern Pacific Branch Railway Company mortgage.

When said Southern Pacific Branch Railway Company mortgage shall have been satisfied of record, the party of the first part, its successors and assigns, shall be entitled

from time to time receive from the trustee hereunder, duly authenticated, as issued under and secured by this mortgage, bonds in respect of the line described in the foregoing subdivision "Fourth" hereof, on the mileage basis of $22,500 and $7,500 as above prescribed in respect of the lines described in subdivisions "First" to "Third," both inclusive, and from "Fifth" to "Fourteenth," both inclusive, due allowance being made on the basis of $30,000 per mile for the bonds theretofore issued against deposit of said Southern Pacific Branch Line bonds.

Authenticating certificates to such bonds are to be signed, and deliveries thereof to be made by the trustee under this mortgage from time to time upon presentation to it of certificates, in writing, executed by the president and chief engineer of the party of the first part, or its successors, reciting the facts authorizing delivery of such bonds hereunder and without other evidence or proof of such facts. Provided, however, that notwithstanding anything herein contained, the party of the first part or its successors, may at any time or from time to time require the party of the third part or its successors to authenticate and certify hereunder and deliver to said party of the first part, its successors or assigns, and permit the sale of such amount or amounts of such bonds as the party of the first part, or its successors, may think fit; provided, that the proceeds of any such bonds issued in excess of the limits hereinabove prescribed shall be received by the trustee or trustees hereunder and not by the party of the first part or its successors or appointees, and shall be disbursed by said trustee or trustees to the party of the first part, or its successors or appointees, only pro

rata as and when the party of the first part or its successors would have been entitled to receive such bonds under the foregoing provisions hereof; and, provided further, that the total amount of bonds issued under or secured by this deed of trust is not in any event to exceed for all purposes herein mentioned the aggregate sum of thirty-eight million dollars.

In witness whereof, the said Southern Pacific Railroad Company, the party of the first part, has caused these presents to be signed in its name by its president and attested by its secretary, and sealed with its corporate seal.

SOUTHERN PACIFIC RAILROAD COMPANY,

By Chas. F. Crocker, President.

Attest: J. L. Willcutt, Secretary.

[Seal.]

The Southern Pacific Company, party of the second part, the lessee of portions of the said Southern Pacific Railroad affected by the foregoing instrument, does hereby consent thereto, and hereby waives any and all objection it might or could have to the execution thereof, or to the issuance of the bonds therein provided for, provided that nothing in this consent or assent contained shall be construed as a grant of any of the property rights of said Southern Pacific Company, or of its franchises, to the mortgagee or trustee named herein.

In testimony whereof, said Southern Pacific Company has caused these presents to be signed in its name by its third vice-president and attested by its secretary, and its

corporate seal to be hereunto affixed this twenty-fifth day of August, 1888.

SOUTHERN PACIFIC COMPANY,

By Charles F. Crocker, Third Vice-President.

Attest: G. L. Lansing, secretary.

[Seal]

The Central Trust Company of New York, party of the third part to the foregoing mortgage or deed of trust, hereby accepts the trust created and declared in and by the foregoing instrument, and agrees to discharge the same, pursuant to the provisions in that behalf therein contained.

In testimony whereof, said Central Trust Company of New York has caused these presents to be signed in its name by its second vice-president and attested by its assistant secretary, and its corporate seal to be hereunto affixed, this seventh day of September, 1888.

CENTRAL TRUST COMPANY OF NEW YORK,

By E. Francis Hyde, Second Vice-President.

Attest: B. G. Mitchell, Asst. Secretary.

[Seal]

State of California,
City and County of San Francisco. } ss.

I, J. F. Kingwell, a notary public in and for the city and county of San Francisco, State of California, residing in said city and county, duly commissioned and sworn, do certify that on the twenty-fifth day of August, A. D. 1888, personally appeared before me in said city and county, Charles F. Crocker, president of the Southern

Pacific Railroad Company, and J. L. Willcutt, secretary of the Southern Pacific Railroad Company, who are both personally known to me to be the said officers of the said Southern Pacific Railroad Company respectively, and the individuals described in and who have executed the foregoing instrument as such officers of said company, and they each severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Southern Pacific Railroad Company freely and voluntarily, and for the uses and purposes therein mentioned, and the said J. L. Willcutt, with whom I am personally acquainted, being duly sworn, did depose and say: That he resides in the city of Oakland, county of Alameda, State of California; that he is and was the secretary of the Southern Pacific Railroad Company at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company, and is and was at the date of execution of said instrument the legal custodian of said seal; that the seal affixed to the foregoing instrument was and is such corporate seal, and was by him so affixed by order of the board of directors of said Southern Pacific Railroad Company; that he signed his name thereto as secretary of said company by the like order. And the said J. L. Willcutt further said that he was acquainted with Charles F. Crocker, and knows that said Charles F. Crocker is and was president of the Southern Pacific Railroad Company at the date and execution of said instrument; that the signature of the said Charles F. Crocker subscribed to said instrument is in the genuine handwritng of the said Charles F. Crocker, and was thereto by him subscribed by

the like order of the board of directors of said company, and in the presence of him, the said deponent.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

J. F. KINGWELL,

Notary public in and for the city and county of San Francisco, California.

[Seal]

State of California,
City and County of San Francisco. } ss.

On this twenty-fifth (25) day of August, in the year one thousand eight hundred and eighty-eight (1888), before me, J. F. Kingwell, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared Chas. F. Crocker, known to me to be the third vice-president of the Southern Pacific Company, and G. L. Lansing, known to me to be the secretary of the Southern Pacific Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this twenty-fifth day of August, A. D. 1888.

J. F. KINGWELL,

Notary public in and for the city and county of San Francisco, State of California.

[Seal]

State of New York,
City and County of New York. } ss.

On this seventh day of September, in the year 1888, before me, Charles Edgar Mills, a commissioner of the State of California, in and for the State of New York, residing in said city of New York, personally appeared E. Francis Hyde and Benjamin G. Mitchell, known to me to be the second vice-president and assistant secretary of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this seventh day of September, A. D. 1888.

CHARLES EDGAR MILLS,
Commissioner for California in New York, 115 and 117 Broadway, New York City.

[Seal]

[Endorsed]: Southern Pacific Railroad Company, of the first part, Southern Pacific Company, of the second part, and Central Trust Company of New York of the third part. Deed of trust. Dated August 25, 1888.

Recorded at the request of H. D. La Motte, Oct. 2, A. D. 1888, at 30 minutes past 4 P. M., in liber No. 21 of Mortgages, page 10, Records of San Mateo Co., Cal.

E. EIKERENKOTTER,
Recorder.
By Claude Fox,
Deputy Recorder.

Recorded at request of H. D. La Motte, in book 84 of Mortgages, page 319 et seq., Oct. 3, 1888, at 14 min. past 9 o'clock, A. M. Records of Santa Clara Co., Cal.

Paid, $19.00.

CHAS. P. OWEN,
County Recorder.

Filed for record at the request of H. D. La Motte, Oct. 3, A. D. 1888, at 1 o'clock, P. M., and recorded in vol. 1 of Trust Deeds, page 123, San Benito County records.

Paid, $19.

R. SHAW,
Recorder.
By Robt. Shaw,
Deputy Recorder.

Filed for record at the request of H. D. La Motte, Oct. 4, A. D. 1888, at 9 o'clock, A. M., and recorded in vol. 54 of Mortgages, page 83, Oct. 4, 1888, Santa Cruz County Records.

Paid, $19.

ED. MARTIN
County recorder.

Recorded at the request of H. D. La Motte, Oct. 4, 1888, at —— minutes past 2 P. M., in record A of Trust Deeds, page 409, Monterey County, Cal.

Recorder's fees, $19.00.

DAVID WALLACE,
County Recorder.

Recorded at request of H. D. La Motte, Oct. 6, 1888, at 30 minutes past 8 o'clock, A. M., in book "P" of Mort-

gages, at page 513 et seq., San Luis Obispo County Records.

$18.50.

F. E. DRAKE,
Recorder.
By F. E. Drake, Jr.,
Deputy.

[Seal]

Recorded at request of H. D. La Motte, at 25 minutes past 10 A. M., Oct. 8, 1888, in book W of Mortgages, page No. 1, Records of Santa Barbara County, Cal.

Paid $18.50.

C. A. STUART,
County Recorder.

Recorded at the request of H. D. La Motte, Oct. 9, A. D. 1888, at 8 minutes past 9 o'clock, A. M., in book 11 of Mortgages, page 56, Records of Ventura Co., Cal.

$16.75 paid.

L. F. EASTIN,
County Recorder.
By Fred Hund,
Deputy Recorder.

Recorded at request of H. D. La Motte, Oct. 10, 1888, at 48 minutes past 8 A. M., in book 179, page 74 of Mortgages, Los Angeles County Records.

Fees, $12.90.

FRANK A. GIBSON,
County Recorder.
By Arthur Bray,
Deputy.

Recorded at request of H. D. La Motte, Oct. 11, 1888, at 8 minutes past 8 A. M., in book 11 of Mortgages, page 129, Records San Bernardino County.

$18.50 paid.

LEGARE ALLEN,
County Recorder.
By Gordon G. Ives,
Deputy Recorder.

Received for record, Oct. 12, 1888, at 9 o'clock, A. M., at request of H. D. La Motte, and recorded in book No. 43 of Mortgages, page 1 et seq., San Diego Co., Cal.

Fees.....$23.50, paid.
Comparing.. 3.

$26.50, paid.

E. G. HAIGHT,
County Recorder.
By B. F. Moore,
Deputy.

Recorded at request of H. D. La Motte, Oct. 13, 1888, at 25 minutes past 9 o'clock A. M., in book 8 of Mortgages, page 376, Records of Kern County.

Fees, $20.00, paid.

N. R. PACKARD,
County Recorder.
By F. A. Shedd,
Deputy.

Recorded at request of H. D. La Motte, at 43 minutes past 7 A. M., October 15, 1888, in vol. "4" of Trust Deeds, page 446 et seq., Records of Tulare county, Cal.

Fees, $20.00, paid.

W. F. THOMAS,
County Recorder.

Recorded at request of H. D. La Motte, at 45 minutes past 1 P. M., Oct. 15, 1888, in vol. "86" of Deeds of Fresno County Records, pages 195 et seq.

$20. C. L. WAINWRIGHT,
Recorder.

Recorded at request of H. D. La Motte, October 16, 1888, at 40 minutes past 8 A. M., in book "P" of Mortgages, page 106, Records of Merced county.

$20.00 paid. J. G. ELLIOTT,
County Recorder.

Recorded at request of H. D. La Motte, October 16, 1888, at 25 minutes past 1 P. M., in liber 35, Deeds of Trust, page 65, Records of Stanislaus County.

Fee, $10.50. C. S. ABBOTT,
County Recorder,
By E. E. Howard,
Deputy.

Recorded at request of H. D. La Motte, October 17, 1888, at 40 minutes past 12 o'clock M., in book "N" of Mortgages, page —, Calaveras County Records.

$20.00. A. L. WYLLIE,
Recorder.
By Edw. Casey,
Deputy.

Recorded at request of H. D. La Motte, October 18, 1888, at 35 minutes past 10 o'clock, A. M., in book "A," vol. 64, page 458 of Deeds San Joaquin County Records.

$20.00 paid.

J. F. MOSELEY,
County Recorder.
By G. E. Housken,
Deputy.

[Seal]

Recorded at request of H. D. La Motte, October 18, A. D. 1888, at 30 minutes past 4 P. M., in vol. 54 of Deeds, page 267, Records of Contra Costa County.

$17.50 paid.

C. S. COUSINS,
County Recorder.
By A. E. Dunkel,
Deputy Recorder.

Recorded in the office of the county recorder of the city and county of San Francisco, Oct. 24, 1888, at 45 minutes past 9 o'clock A. M., in liber 1320 of Deeds, page 85.

A. T. SPOTTS,
County Recorder.
By C. H. McCourtney,
Deputy.

Recorded Oct. 26, 1888, at 46 minutes past 3 P. M., in liber 302 of Mortgages, page 1, Records of Alameda County.

F. D. HINDS,
County Recorder.

Recorded in the office of the county recorder of the city and county of San Francisco, Oct. 27, 1888, at 25 minutes past 10 o'clock, A. M., in liber 890 of Mortgages, page 283.

A. T. SPOTTS,
County Recorder.

State of California,
City and County of San Francisco. } ss.

I, Alexander Russell, county recorder, do hereby certify that the annexed is a whole, true, and correct copy of an original record, as will appear by reference to Book 1320 of Deeds, page 85 (and 890 Mtgs. 283), now in my office, and that said copy has been compared with the original, and it is a correct transcript therefrom. Witness my hand and official seal this sixth day of March, A. D. 1889.

(Signed), ALEXANDER RUSSELL,
County Recorder.
Per M. Warshauer,
Deputy.

(Seal, Recorder's Office, City and County of San Francisco, California.)

(Marked) Defendants' Exhibit before the special examine, No. 91, Stephen Potter, special examiner.)

I hereby certify that I have compared the foregoing document with the original exhibit, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 14, 1893.

[Endorsed]: Deed of Trust. Southern Pacific Railroad Company of the first part, Southern Pacific Company of the second part, and Central Trust Company of New York of the third part. Dated August 25, 1888. Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 92.—Letter.

(Before the Special Examiner.)

(8-106.)

Department of the Interior

Office of the Commissioner of Railroads.

Washington, D. C., October 24, 1889.

Sir:

Your favor of the sixteenth instant, containing stated enclosures of Report on Form 8-008 A for the year ending June 30, 1889, for the Southern Pacific Railroad Company, is received, for which please accept thanks.

Very respectfully,

W. M. THOMPSON,

In charge of office.

To G. L. Lansing, Esq., Controller, Southern Pacific company, San Francisco, Cal.

(16032b-500)

(Marked "Defendants' Exhibit before the Special Examiner No. 92, Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true, and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, Oct. 3, 1893.

[Endorsed]: Filed December 5, 1893. Wm. Van Dyke, Clerk.

Defendants' Exhibit No. 93.—Letter.

(Before the Special Examiner.)

Department of the Interior,
Office of Commissioner of Railroads,
Washington, D. C., October 21, 1890.

G. L. Lansing, Esq., Secretary and Controller, Southern Pacific Railroad Company, San Francisco, Cal.

Dear Sir:—

I have acknowledge the receipt of your letter of the eighth instant, together with reports on form 8-008 A for the year ending June 30, 1890, for the Central Pacific, Oregon, and California, and the Southern Pacific Railroad Companies. Also report on form 8-002 B for the Central Pacific Railroad Company for the half year ending June 30, 1890.

Very truly yours,
W. M. THOMPSON,
In charge of office.

(Marked "Defendants' Exhibit before the Special Examiner No. 93, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true, and correct thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 3, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 94.—Letter.

(Before the Special Examiner.)

Department of the Interior,
Office of Commissioner of Railroads,
Washington, D. C., October 21, 1891.

G. L. Lansing, Esq., Secretary and Controller, Southern Pacific Company, San Francisco, Cal.

Dear Sir:—

I have to acknowledge the receipt of your letter of the ninth instant, inclosing reports as follows:

Central Pacific Railroad Company, for half year ending June 30, 1891, Form B.

Central Pacific Railroad Company, for the year ending June 30, 1891, Form A.

Oregon & California Raliroad Company, for year ending June 30, 1891, Form A.

Southern Pacific Railroad Company of California, for year ending June 30, 1891, Form A.

Very truly yours,
W. M. THOMPSON,
Bookkeeper.

(Marked "Defendants' Exhibit before the Special Examiner, 94. Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true, and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 3, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 95.—Letter.

(Before the Special Examiner.)

Department of the Interior,
Office of Commissioner of Railroads,
Washington, D. C., September 28, 1892.

G. L. Lansing, Esq., Secretary and Controller, Southern Pacific Company, San Francisco, Cal.

Dear Sir:—

I have to acknowledge the receipt of your letter of the nineteenth instant, transmitting reports on Form 8-008 A for the year ending June 30, 1892, for the Southern Pacific Railroad Company of California, and the Oregon and California Railroad Company.

Very truly yours,
W. M. THOMPSON,
Bookkeeper.

(Marked "Defendants' Exhibit before the Special Examiner No. 95, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true, and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 3, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 96.—Letter.

(Before the Special Examiner.)

Department of the Interior,
Office of Commissioner of Railroads,
Washington, D. C., September 16, 1893.

G. L. Lansing, Esq., Secretary and Controller, Southern Pacific Company, San Francisco, Cal.

Sir:—

The annual report of the Southern Pacific Railroad Company of California, on our Form 8-008 A, for the year ending June 30, 1893, has been received.

Very respectfully,
F. E. STORM,
Bookkeeper.

(Marked "Defendants' Exhibit before the Special Examiner No. 96, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true, and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 3, 1893.

[Endorsed:] Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Exhibit Before the Special Examiner "L."

(Stephen Potter, Special Examiner.)

Directors' Meeting.

August 12, 1873.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held on Tuesday, August 12, 1873, at 2 o'clock P. M.

Present: Directors D. D. Colton, Robt. Robinson, Chas. Mayne, S. T. Gage, and J. L. Willcutt.

Absent: Directors C. P. Huntington and E. H. Miller, Jr.

In the absence of the president and vice president, on motion, duly seconded, Chas. Mayne was called to the chair.

The record of proceedings of the last meeting of the board was read and approved.

The secretary presented the certificate of election—at the annual meeting held on the eleventh inst.—which on motion was received and ordered to be placed on file.

The board then proceeded to the election of officers, with the following result:

Officers elected.

C. P. Huntington was elected president.

David D. Colton was elected vice president.

E. H. Miller, Jr., was elected treasurer.

J. L. Willcutt was elected secretary.

Whereupon the chair was vacated, and, in the absence of the president, D. D. Colton presided as vice president of the board.

The following resolution was offered by Robert Robinson, and, being duly seconded, was adopted by a unanimous vote:

Resolution to Consolidate with the S. P. Branch R. R.

Resolved, That this corporation do consolidate with the Southern Pacific Branch Railroad Company upon the terms and conditions set forth in the articles of association, amalgamation and consolidation now herewith presented, which are hereby approved, and the vice president (in the absence of the president) and secretary of this company are hereby authorized and required to subscribe the name of this corporation to said articles and affix its corporate seal thereto, and deliver said articles as the act and deed of this corporation.

Thereupon the vice president and secretary executed the said articles of association, amalgamation and consolidation and the corporate seal of the company was thereto affixed.

No other business appearing before the board the foregoing minutes were read and approved, whereupon the meeting adjourned "sine die"—it first having been ordered that the articles referred to be engrossed upon these minutes.

(The articles of consolidation with the Southern Pacific Branch Railroad, unexecuted, are then set out, but are omitted in accordance with the stipulation of counsel for this copy.)

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

August 19, 1873.

The board of directors named in article three of the articles of association, amalgamation and consolidation of a new corporation under the name and style of the Southern Pacific Railroad Company, to-wit: C. P. Huntington, D. D. Colton, Robert Robinson, Chas. Mayne, S. T. Gage, E. H. Miller, Jr., and J. L. Willcutt, met at the office of the company on Tuesday, August 19, 1873, at 2 P. M. for the purpose, of organizing as a board by the election of the necessary officers for the ensuing year.

Present: D. D. Colton, Robert Robinson, Charles Mayne, S. T. Gage, and J. L. Willcutt.

Absent: Directors C. P. Huntington and E. H. Miller, Jr.

On motion Chas. Mayne was called to the chair and J. L. Willcutt appointed temporary secretary.

The articles of association, amalgamation and consolidation were thereupon presented and read and ordered to be engrossed upon the minutes of the meeting. Following is a copy:

(The articles of association, amalgamation and consolidation, as executed, are then set out, but are omitted from this in accordance with the stipulation of counsel.)

Officers of new Corporation, elected.

The board then proceeded to the election of officers, with the following result:

C. P. Huntington was elected president.

David D. Colton was elected vice-president.

E. H. Miller, Jr., was elected treasurer.

J. L. Willcutt, was elected secretary.

Bonds of Treasurer and Secretary.

The bond of E. H. Miller, Jr., was presented in the sum of $50,000, with Leland Stanford and Mark Hopkins sureties thereon, and in like manner the bond of J. L. Willcutt, the secretary, in the sum of $20,000, with H. M. Newall and Chas. Mayne sureties thereon, and on motion duly seconded were accepted and approved as the official bonds of said treasurer and said secretary, and ordered to be placed on file.

No other business appearing before the board, and the foregoing minutes having been duly read and approved, on motion duly seconded, the meeting adjourned.

(Signed.) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

April 10, 1874.

A meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Friday, the tenth day of April, A.

D. 1874, at 2 o'clock P. M., pursuant to the call of the vice president.

Present: Directors D. D. Colton, Robert Robinson, E. H. Miller, Jr., S. T. Gage and J. L. Willcutt, Vice President D. D. Colton presiding.

Absent: Directors C. P. Huntington and Chas. Mayne.

The record of proceedings of the last meeting of the board was read and approved.

The following resolution was offered by Robert Robinson, and being duly seconded, was adopted by a unanimous vote:

Resolution adopting line of road from San Fernando to Los Angeles, thence to Spadra, map AA.

Resolved, that the line of railroad as it has been surveyed and laid out on map marked AA, and described as follows: Commencing at a point in the northwest quarter of section three, township two north, range fifteen west, San Bernardino base and meridian, and running thence in a southeasterly direction to the city of Los Angeles, and thence in an easterly direction to a point in the northeasterly quarter of section twenty-seven, towship 1 south, range nine west, San Bernardino base and meridian —being map and profile of section No. 1, Southern Pacific Railroad and telegraph line—authorized by the twenty-third section of the Texas Pacific Railroad Act—approved March 3, 1871: be and the same is hereby adopted as the route of said railroad between the points named.

The following resolution was offered by E. H. Miller, Jr., and on motion duly seconded was adopted by a unanimous vote:

Vice-President and Secretary authorized to sign Deeds.

Resolved, that in the absence of the president of this company, who resides in New York, the vice president and seceretary be and they are hereby authorized to sign deeds of any and all town lots or lands sold by the Southern Pacific Railroad Company, and affix the seal of said company thereto as the act and deed of said company.

No further business appearing before the board, and the foregoing minutes having been read and approved on motion duly seconded, the meeting adjourned.

(Signed.) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

September 8, 1874.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Tuesday, September 8, 1874, pursuant to the by-laws, Vice President Chas. Crocker, presiding.

Present: Directors Chas. Crocker, Robert Robinson, E. H. Miller, Jr., S. T. Gage and J. L. Willcutt.

Absent: Directors C. P. Huntington and D. D. Colton.

The record of proceedings of the last meeting of the board was read and approved.

The following resolution was offered by Robert Robinson, and beingly duly seconded, was adopted by a unanimous vote:

Resolution adopting line of road from 40th to 60th mile southeasterly from Goshen, map D.

Resolved, that the line of the railroad as it has been surveyed and laid out on map marked D and described as follows: Commencing at a point at the end of the fortieth mile on the line south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley Branch of the Central Pacific Railroad, said point of commencement being in the northwest quarter of section two, township twenty-five south, range twenty-five east, Mount Diablo base and meridian, running thence in a southeasterly direction, and ending at the termination of the twentieth mile therefrom in the northeast quarter of section nine, township twenty-eight south, range twenty-six east, Mount Diablo base and meridian, be and the same is hereby adopted as the route of said railroad between the points named.

Completion of same reported.

The Contract & Finance Company reported the completion of the section of road referred to in the foregoing resolution, and asked the acceptance of same, whereupon the following resolution was offered by E. H. Miller, Jr., and on motion duly seconded was adopted by a unanimous vote:

Resolution to accept completed road.

Resolved, that the company accepts the twenty miles of railroad and telegraph line completed by said Contract & Finance Company, and that the proportion of stock and bonds which said Contract & Finance Company are entitled to receive under their contract of May 1, 1871, be, and the same is hereby ordered to be issued and delivered to said Contract & Finance Company, and a proper receipt taken therefor and filed as a voucher for such payment.

The following resolution was offered by Robert Robinson, and being duly seconded, was adopted by a unanimous vote:

Resolution adopting line of road from Carnadero to Soledad, AAA.

Commencing at a point where the Pajaro Branch and described as follows:

been surveyed and laid out on map marked AAA,

Resolved, that the line of the railroad as it has of the Southern Pacific Railroad intersects the main line of said railroad at Carnadero station (2.2 miles southerly from Gilroy), thence southerly via Pajaro and Salinas to a point on the northerly bank of the Salinas river, near the town of Soledad—a distance of 60.4 miles from said point of commencement—be and the same is hereby adopted as the route of said railroad between the points named.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion duly seconded the meeting adjourned.

(Signed.) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

October 1, 1874.

A *regular* meeting of the board of directors of the Southern Pacific Railroad Company was held at the company's office on Thursday, October 1, A. D. 1874, at 2 o'clock P. M., pursuant to call of Directors Chas. Crocker, D. D. Colton and Robert Robinson—Vice President Chas. Crocker, presiding:

Present: Directors Chas. Crocker, D. D. Colton, Robert Robinson, E. H. Miller, Jr., S. T. Gage and J. L. Willcutt.

Absent: Director C. P. Huntington.

The following resolution was offered by Robert Robinson, and being duly seconded, was adopted by a unanimous vote:

Resolution adopting line of road from 60th to 78.65th mile south from Goshen, Map "E."

Resolved, the line of the railroad as it has been surveyed and laid out on map marked E, and described as follows: Commencing at a point at the end of the sixtieth mile on the line south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley Branch of the Central Pacific Railroad, said point of commencement being in the northeast quarter of section nine, township twenty-eight south, range twenty-six east, Mount Diablo base and meridian, running thence in a southeasterly direction a distance of thirteen and sixty-five one hundredths miles, be, and the same is, hereby adopted as the route of said railroad between the points named.

Completion of same reported.

The Contract & Finance Company having reported the completion of the road referred to in the foregoing resolution, and asked the acceptance of same, the following resolution was offered by S. T. Gage, and being duly seconded, was adopted by a unanimous vote:

Resolution to accept completed road.

Resolved, that the company accept the thirteen sixty-five one hundredths miles of railroad and telegraph line completed by said Contract & Finance

Company, and that the proportion of stock and bonds which said Contract & Finance Company are entitled to receive under their contract of May 1, 1871, be, and the same is hereby ordered to be issued and delivered to said Contract & Finance Company, and a proper receipt taken therefor and filed as a voucher for such payment.

Presentation of C. & F. Co. account for construction of 50 miles of road in Los Angeles County.

The Contract & Finance Company having presented an account for the construction of fifty miles of road in Los Angeles county, as laid out on map marked AA, and described on page 136 of these minutes, the following resolution was offered by E. H. Miller, Jr., and adopted by a unanimous vote:

Resolution accepting same and authorizing payment of account

Resolved, that the company accept the fifty miles of railroad and telegraph line completed by said Contract & Finance Company, and it is hereby ordered that stock and bonds be issued to said Contract & Finance Company in payment therefor in the same proportion as provided for in contract for construction of main line (dated May 1, 1871), the said contract having been made prior to the consolidation of the main line with the line from a point at or near Taheechaypah Pass, via Los Angeles.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion duly seconded, the meeting adjourned.

(Signed.) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

December 17, 1874.

A meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Thursday, December 17, A. D. 1874, at 2 o'clock P. M., pursuant to adjournment, all of the directors being present, towit: Charles Crocker, David D. Colton, E. H. Miller, Jr., Robert Robinson, N. T. Smith, S. T. Gage and J. L. Willcutt—Chas. Crocker presiding as president of the board.

The following resolution was offered by Robert Robinson, towit:

Resolution to Consolidate with L. A. & S. P. R. R. Co.

Resolved, that the corporation do consolidate with the Los Angeles & San Pedro Railroad Company upon the terms and conditions set forth in the articles of association, amalgamation and consolidation now herewith presented, which are hereby approved, and the president and secretary of this company are hereby authorized and required to subscribe the name of this corporation to said articles and affix its corporate seal thereto, and deliver said articles as the act and deed of this corporation, which resolution was adopted by the unanimous vote and concurrence of the full board of directors—the articles referred to in this resolution being as follows:

(The articles of association, amalgamation and consolidation with L. A. & S. P. R. R. Co., unexe-

cuted, are then set out, but are omitted from this copy in accordance with the stipulation of counsel.)

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion duly seconded the meeting adjourned to Saturday, nineteenth instant, at 11 o'clock A. M.

(Signed.) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

December 19, 1874.

The board of directors named in article third of the articles of association, amalgamation and consolidation of the new corporation, under the name of the Southern Pacific Railroad Company, towit: Charles Crocker, David D. Colton, E. H. Miller, Jr., Robert Robinson, Nicholas T. Smith, Stephen T. Gage and Joseph L. Willcutt met at the office of the company on Saturday, December 19, 1874, at 11 o'clock A. M., pursuant to adjournment—the full board being present.

On motion David D. Colton occupied the chair, and J. L. Willcutt was appointed secretary of the meeting.

Robert Robinson reported that the articles of association, amalgamation and consolidation had been duly executed and filed in the office of the secretary of state, and presented a certified copy thereof, reading as follows:

(The articles of association, amalgamation and consolidation with L. A. & S. P. R. R., as executed, are then set out, but are omitted from this copy in accordance with the stipulation of counsel.)

(Signed.) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

February 2, 1875.

A meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Tuesday, February 2, 1875, at 11 o'clock A. M., pursuant to the call of the president.

Present: Directors Charles Crocker, Robert Robinson, N. T. Smith, E. H. Miller, Jr., and J. L. Willcutt.

Absent: Directors David D. Colton and S. T. Gage.

President Chas. Crocker presided at the meeting.

Communication from Western Development Company.

A communication was presented from the Western Development Company, reading as follows:

To the President and Directors of the Southern Pacific Railroad Company.

Gentlemen:

The undersigned, Western Development Company, having purchased from the Contract & Finance Company (with your approval) the contract for the construction of your railroad from Gilroy, in the county of Santa Clara, to the eastern boundary of the State of California, dated on the first day of May, A. D. 1871, find that by the amalgamation and consolidation of your company with other companies and the

addition of other lines by act of Congress, that you now require the construction of a line by the way of Soledad through the Polonio Pass to intersect the old line at or near Poso Creek, and also a line from Tehechapa junction via Los Angeles to a point near Fort Yuma—making about eight hundred and seventy-nine miles of unfinished road that it is necessary to construct within the term required by the laws of the United States and of this State, while the amount left uncompleted of that part of the road included in the contract now held by this company is only about three hundred and twenty-two miles. It is believed that the whole work can be done more economically by one company than it could be by a number of companies, and being desirous of extending our operations we propose to surrender the contract purchased from the Contract & Finance Company, and enter into a new contract substantially in the form herewith marked "A." We believe the terms are more favorable than the work can be done by several contractors or by any other company. We respectfully ask you to consider the subject.

WESTERN DEVELOPMENT COMPANY,
By JOHN MILLER,
Secretary.

Whereupon the following resolution was offered by Robert Robinson, and being duly seconded was adopted by a unanimous vote.

Approving assignment to contract to W. D. Co.

Whereas, on the first day of May, A. D. 1871, this company entered into a contract with the Contract

& Finance Company, a corporation duly organized under the laws of this State by which said contract the said Contract & Finance Company covenanted and agreed to construct and equip the railroad of this company from Gilroy, in the county of Santa Clara, to the easterly boundary of the State of California, near Fort Mojave, and shown by said contract as spread upon the records of this company. And

Whereas, the said Contract & Finance Company has, by an instrument in writing under its corporate seal, assigned and transferred said contract to the Western Development Company, a corporation duly incorporated and organized under the laws of the State of California.

Now, therefore, it is resolved that this company consents to, and approves of, said assignment and accepts the said Western Development Company as contractor and party to said contract as fully and in the same manner as the said Contract & Finance Company was before said assignment, and entitled to all the rights and privileges of said Contract & Finance Company before said assignment.

A draft of agreement submitted by the Western Development Company was presented, reading as follows:

Agreement with Western Development Co.

Articles of agreement made this day of A. D. 1875, between the Southern Pacific Railroad Company, a corporation duly organized under the laws of the State of California, party of the first part, and the Western Development Company, a corporation duly

organized under the laws of said State, party of the second part, witnesseth:

Article First.

The said party of the second part hereby covenants and agrees to and with the said party of the first part, its successors and assigns, that it will, in good workmanlike manner, construct, finish, furnish, and complete the railroad and telegraph line of the said party of the first part, upon the routes selected by said party of the first part, beginning at Soledad in the county of Monterey, thence to the eastern boundary of the State on the Colorado river at or near the "Needles" (less the amount constructed between Poso Creek and Sumner Station), also between Los Gatos Creek and Goshen station, also from the junction at or near Tehachapa Pass by way of Los Angeles to the Texas Pacific Railroad near Fort Yuma, all in the State of California, together with the rolling stock, buildings, instruments, and fixtures therefor, that is to say, to construct, furnish, finish, do and complete, all the clearing, grading, excavations, embankments, ditches, drains, masonry, culverts, bridges and trestling, furnish all the ties, timber, rails, iron of all kinds, for bridges and other purposes; all the chairs, fishplates, spikes, frogs, and switches; lay and complete all the main line of track, and all the side tracks, spur tracks, and turnouts, necessary, usual, and proper for a single track railroad.

Also all necessary and proper buildings and erections for stations, freight and passenger depots, water tanks, turntables, engine-houses, work and repair shops, with all the tools, furniture and implements, necessary or proper therefor; also to furnish and place on said railroad all necessary and proper rolling stock, instruments and equipments, including locomotives, passenger, box, freight, baggage, platform, and dump and hand cars for the proper and successful working, operating and repairing of said railroad and telegraph line; such rolling stock to be furnished and delivered as may be required by the said party of the first part, not to exceed the following quantity and proportion, viz: One locomotive for every five miles of road constructed under this contract; one passenger car for every mile of road. Three box and flat cars for every mile of road; the proportion of each to be determined by the said party of the first part. On hand car for every six miles of road. Such number of dump cars as may be required for maintaining the line.

Twenty miles of railroad and telegraph line to be constructed and equipped each year, and an additional twenty miles a year if the same be required by the said party of the first part, until the whole is completed. First twenty miles to be completed on or before the first day July, A. D. 1875, and the whole to be completed within the time which now is or may hereafter be limited by act of Congress.

Article Second.

And the said party of the second part hereby further covenants and agrees that it will furnish and provide and pay for all the engineer service necessary or requisite for the location and construction of said railroad and its appurtenances, such location and construction to be subject to the approval of the president or chief engineer of said party of the first part, who may direct such changes to be made as they may deem proper; the salary of the chief engineer of the said railroad company to be paid by the said party of the first part.

The said party of the second part also agrees to pay all the cost and expense of the right of way, and of procuring the same for the portion of said railroad constructed under this contract.

Article Third.

And the said party of the first part hereby covenants and agrees to and with the said party of the second part, its successors and assigns, that it will pay for the construction and equipment of said railroad and telegraph line as aforesaid, the sum of thirty-one millions, six hundred and fifty-four thousand dollars in first mortgage bonds of the said Southern Pacific Railroad Company, and thirty-one millions, six hundred and fifty-four thousand dollars of the capital stock of said company not heretofore subscribed for or issued; and the said party of the second part shall subscribe for all said capital stock as aforesaid and

shall receive certificates of stock and the bonds of said company therefor pro rata, as the construction of the railroad and telegraph line progresses and is accepted by the said party of the first part in sections of twenty miles each.

Article Fourth.

And the said party of the first part hereby further covenants and agrees to transport and convey over its railroads free of charge, all agents, laborers and employees, and all provisions, tools, iron and other materials, and all other property, employed or used, or to be employed or used in and about the construction of said railroad and telegraph line, and their appurtenances by or for the said party of the second part.

Article Fifth.

And it is further covenanted and agreed that this contract or any part thereof shall not be assigned or transferred by said party of the second part without the written consent of the said party of the first part being first had and obtained, and neither the said party of the second part nor any assignee or sub-contractor, or any employer, laborer, or any person or corporation furnishing any material, or performing any labor or service upon the said railroad or telegraph line, or the equipments, fixtures or appurtenances, or any part thereof, shall have, hold, or enforce any lien, incumbrance or claim against or upon the said party of the first part, their successors, or assigns, or their railroad or telegraph line; or said

equipments, fixtures or appurtenances, or any part thereof, or any property of any kind of said parties of the first part, or any of the said work contracted to be done herein either under the laws of the State of California, now in force, or which may hereafter be enacted or in any other way whatsoever.

Article Sixth.

And it is hereby further agreed that should the said party of the first part at any time become dissatisfied with the manner of the prosecution of the work by the said party of the second part, and if the said party of the second part shall fail, neglect or refuse, when requested, to remove the cause of such dissatisfaction, or to prosecute said work as required by said party of the first part, or to fully observe, perform and execute its agreements as herein set forth, then and in such case the said party of the first part shall have the right to take possession of all the said work whether finished or unfinished, as also of all the locomotives, cars, and rolling stock, rails, ties and all other railroad material; all the tools, horses, carts, wagons, provisions, material and machinery of all kinds and in the construction of said railroad or telegraph line or purchased for that purpose and may go on and complete the said road and telegraph line at the expense of the said party of the second part, the profit or loss as the case may be, to be received or sustained by the said party of the second part.

Article Seventh.

And it is hereby further stipulated and agreed, that no stockholder of the said Southern Pacific Railroad Company shall be individually or personally liable or bound by the terms of this agreement, beyond or exceeding the actual amount of stock of said company held by him at the date of said agreement.

In testimony whereof the said parties have caused these presents to be signed by the president and secretary of the party of the first part and the secretary of the party of the second part, and their respective corporate seals to be hereto affixed the day and year aforesaid, as the act and deed of said companies.

SOUTHERN PACIFIC RAILROAD COMPANY,

[Seal] By President.

WESTERN DEVELOPMENT COMPANY,

[Seal] By Secretary.

Whereupon E. H. Miller, Jr., offered the following resolution, which, being duly seconded, was adopted by a unanimous vote.

Resolution accepting proposition of W. D. Co.

Resolved, that this company do accept the proposition of the Western Development Company to construct, complete, and equip so much of the road and telgraph line, as is mentioned in the form of contract submitted, and that the president and secretary are hereby ordered and directed to subscribe their names to the said contract and affix the corporate seal thereto as the act and deed of this company.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion the meeting adjourned.

(Signed.) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

August 27, 1875.

A meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Friday, August 27, A. D. 1875, at 3 o'clock P. M., pursuant to the call of the president.

Present: Directors Chas. Crocker, David D. Colton, Robert Robinson, E. H. Miller, Jr., S. T. Gage, N. T. Smith and J. L. Willcutt; President Chas. Crocker presiding.

The following resolution was offered by S. T. Gage, and, duly seconded, was adopted by a unanimous vote.

Resolved, that this company enter into a contract with Harvey S. Brown, in the following words and figures, towit:

Agreement with Harvey S. Brown.

"Articles of agreement made and entered into this —— day of August, A. D. 1875, by and between the Southern Pacific Railroad Company, party of the first part, and Harvey S. Brown, party of the second part, witnesseth: that the party of the first part in consideration of the sum of one dollar, to it in hand paid, contracts and agrees to quit claim and release to the said Harvey S. Brown, party of the second part and his assigns, all of its interest in and to the

Rancho of the Sobrante of San Jacinto, as patented by the government of the United States and situated in township three (3) south, ranges five (5) and six (6) west, and township four (4) south, and ranges four (4), five (5) and six (6) west, San Bernardino base and meridian of United States surveys, being the same rancho upon which are situated the Tin Mines of Temescal, and situated in the county of San Bernardino, State of California, upon the payment by said Harvey S. Brown, to the said party of the first part, in gold coin of the sum of sixty-one thousand dollars, on or before the ninth day of March, 1876. It being understood by both parties that the United States has patented said land to parties, other than either of the parties hereto.

"And it is hereby expressly agreed and understood, that in the event of a failure by said Harvey S. Brown, or his assigns, to make the payments herein provided and stipulated, on or before the said ninth day of March, 1876, then this agreement ceases and determines, and becomes utterly void and of no effect.

"In witness whereof, the said party of the first part has caused these presents to be signed by its president and secretary, and affixed its corporate seal thereto, as the act and deed of said corporation, and the said party of the second part has signed and

sealed the same this day and date first above written.

"SOUTHERN PACIFIC RAILROAD COMPANY.

"By ————————, President.

[Seal] "By ————————, Secretary."

And that the president and secretary be and they are hereby directed to sign the same and affix the corporate seal of the company thereto as the act and deed of this company.

The following preamble and resolution was offered by N. T. Smith, and adopted by a unanimous vote.

Whereas, on the ninth day of March, A. D. 1870, Leland Stanford, C. P. Huntington, Mark Hopkins, Chas. Crocker and E. B. Crocker, made a contract with Lloyd Tevis for the benefit of the Southern Pacific Railroad Company, and

Whereas, on the second day of November, A. D. 1872, this company ratified and assumed said contract, and

Whereas, the said Lloyd Tevis has fully performed and completed said contract on his part, and

Whereas, the said Leland Stanford, C. P. Huntington, Mark Hopkins and Chas. Crocker did on the third day of August, A. D. 1875, pay to said Lloyd Tevis one hundred and seventy-five first mortgage bonds of this company of the denomination of $1,000 each in fulfillment of said contract on the part of this company, now therefore be it

To deliver S. H. H. & Co. $175,000 in bonds account Lloyd Tevis.

Resolved, that the treasurer of this company be, and is hereby authorized to deliver to said Stanford, Huntington, Hopkins & Crocker, one hundred and and seventy-five first mortgage bonds of this company, of one thousand dollars each, or in lieu thereof one hundred and seventy five bonds of the county of Los Angeles of $1,000 each, in full satisfaction of said contract on the part of this company, and to accept and file the receipt of the said Tevis as a voucher for such payment.

On motion of David D. Colton the following preamble and resolution was unanimously adopted:

Whereas, by the articles of association, amalgamation and consolidation between the Southern Pacific Railroad Company and the Los Angeles & San Pedro Railroad Company into this company, made and executed on the seventeenth day of December, 1874, it was provided among other matters and things that the stockholders of said companies should severally receive the same number of shares of the capital stock of this company which they held of the capital stock of said companies; and

Whereas, at the date of said consolidation the capital stock of said Los Angeles & San Pedro Railroad Company consisted of five hundred thousand dollars divided into five thousand shares of one hundred dollars each; and

Whereas, two thousand seven hundred and forty shares of the capital stock of said last-named company, at the date of said consolidation, was owned

and held by Leland Stanford, Collis P. Huntington, Charles Crocker and Mark Hopkins in common; and

Whereas, the railroad and appurtenances of said last-named company were out of repair and required a large expenditure of money to improve and repair the same, and

Whereas, at the instance and request of said company, the said Stanford, Huntington, Crocker, and Hopkins did make said improvements and repairs at their own cost and charge and therein did expend large sums of money, and upon the like instance and request did expend other large sums of money in paying off and satisfying the indebtedness of said company; and

Whereas, the said Stanford, Huntington, Crocker and Hopkins are the owners and holders of the bonded indebtedness of the said Los Angeles & San Pedro Railroad Company, which existed at the time of said consolidation to the amount of three hundred thousand dollars in six hundred bonds for the sum of five hundred dollars each, bearing ten per cent interest, which bonds it has been heretofore deemed and considered advisable to call in and cancel and to issue in lieu thereof and deliver to the holders thereof three hundred of the first mortgage bonds of this company, for the sum of one thousand dollars each, bearing six per cent interest;

Now, therefore, in consideration of the premises, it is ordered:

To deliver 2740 shares new stock to S. H. H. & C.

First. That two thousand seven hundred and forty shares of the capital stock of this company be

issued in the usual form and delivered to said Stanford, Huntington, Crocker and Hopkins, pursuant to the aforesaid condition of said articles of consolidation in place of the stock so held as aforesaid by them in the said Los Angeles & San Pedro Railroad Company.

To pay $500,000 in bonds to S. H. H. & C. in payt. of expenditures on account L. A. & S. P. R. R. Co.

Second. That first mortgage bonds of this company, for the sum of one thousand dollars each, to the number of five hundred be delivered to said Stanford, Huntington, Crocker and Hopkins in payment and satisfaction of their said claim for moneys expended by them in making the aforesaid repairs and improvements and in paying off and satisfying the aforesaid indebtedness of said Los Angeles & San Pedro Railroad Company, and that the usual vouchers be taken therefor; and

To exchange Bonds of S. P. R. R. Co. for Bonds of L. A. & S. P. R. R. to amount of 300,000.

Third. That first mortgage bonds of this company, for the sum of one thousand dollars each, to the number of three hundred, be delivered to said Stanford, Huntington, Crocker and Hopkins in exchange for the aforesaid six hundred bonds of said Los Angeles & San Pedro Railroad Company so as aforesaid held by them upon the surrender thereof, and when said last-named bonds shall have been so surrendered that they be canceled by defacing the seal of said company, punching the signatures of the president and secretary and drawing a red line through each of the coupons annexed thereto.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, the meeting adjourned.

(Signed] J. L. WILLCUTT,
Secretary.

Directors' Meeting.

September 14, 1875.

A regular metting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Tuesday, September 14, A. D. 1875, at 2 o'clock P. M., in pursuance of the by-laws.

Present: Directors Charles Crocker, David D. Colton, Robert Robinson, E. H. Miller, Jr., and J. L. Willcutt; president Charles Crocker presiding as president of the board.

Absent: Directors N. T. Smith and S. T. Gage.

* * * * * * * * *

The following resolution was offered by E. H. Miller, Jr., and on motion duly seconded was adopted by a unanimous vote:

Resolution adopting line of road Spadra to San Gorgonio Pass 50 miles Map "BB"

Resolved, that the line of railroad as it has been surveyed and laid out on map marked "BB" and described as follows—commencing at a point in the northeast quarter (N. E. ¼) of section twenty-seven (27), township one (1) south, range nine (9) west, San Bernardino base and meridian, and running thence in a southeasterly direction to a point in the southwest quarter (S. W. ¼) of section four (4), township

three (3) south, range one (1) west, San Bernardino base and meridian, being the map and profile of section No. 2 of the Southern Pacific Railroad and telegraph line authorized by the twenty-third section of the Texas Pacific Railroad act, approved March 3, 1871, be and the same is hereby adopted as the route of said railroad between the points named.

No further business appearing before the board, and the foregoing minutes having been read and approved on motion duly seconded the meeting adjourned.

(Signed) J. L. WILLCUTT,
Secty.

Directors' Meeting.

December 2, 1875.

A special meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Thursday, December 2, A. D. 1875, at 2 o'clock P. M., pursuant to the call of the vice president in —— absence of the president.

Present: Directors David D. Colton, E. H. Miller, Jr., S. T. Gage, N. T. Smith, and J. L. Willcutt, vice-president David D. Colton presiding.

Absent: Directors Chas. Crocker and Robert Robinson.

* * * * * * * * *

The following preamble and resolutions, on motion or E. H. Miller, Jr., were unanimously adopted:

Resolution to under-

Whereas, this company has constructed over five hundred miles of its road from the city of San Fran-

take construction of Texas Pacific Railroad.

cisco to its proposed junction with the Texas Pacific Railroad at or near the Colorado river in the south-eastern part of the State, leaving only two hundred miles to be completed, upon which the heaviest work is nearly finished;

And, whereas, this company expects to complete its road to the Colorado river by the first of July, 1876;

And, whereas, the eastern portion of the road will be of little value to the company, and of little convenience to the public so long as it remains without a connecting road running to the east on the line of the so-called Texas Pacific Railroad;

And whereas, it is of vital importance to the company to secure as speedily as possible a through railroad connection with the commercial centers of the East;

And whereas, the Texas Pacific Railroad Company has failed to comply with the conditions imposed upon it by an act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of ts road, and for other purposes," approved March 3, 1871; now, therefore,

Resolved: First. That this company, if so authorized and empowered by Congress, will undertake the construction and equipment of the entire railroad and telegraph line provided for in said act lying to the east of eastern boundary line of the State of California, or to construct the same to a point of connection with said Texas Pacific Railroad Company,

upon the same considerations, terms, conditions, restrictions, immunities, powers, rights and privileges which, by said act, were granted to and imposed upon said Texas Pacific Railroad Company, and will agree to complete the same within five years after the passage of an act of Congress, vesting in it, all the grants, powers, rights, privileges and immunities, and imposing upon it all the conditions, limitations, and restrictions, respectively vested in and imposed upon said Texas Pacific Railroad Company by said act, and will ask of Congress no other or further aid.

Resolved: Second. That C. P. Huntington be and hereby is authorized and empowered on behalf of this company to submit the foregoing proposition to Congress, and urge its acceptance.

Resolved: Third. That a copy of these resolutions, under the seal of the company, and signed by the vice-president, the president being absent, and secretary, be forwarded to said Huntington.

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

March 28, 1876.

A special meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Tuesday, March 28, 1876, at 11 o'clock A. M., pursuant to the call of the president.

Present: Directors Charles Crocker, David D. Colton, Robert Robinson, E. H. Miller, Jr., N. T. Smith, and J. L. Willcutt—Charles Crocker presiding as president of the board.

Absent: Director S. T. Gage.

The following resolution was offered by David D. Colton and adopted by a unanimous vote:

Resolution adopting line of road 80th to 100th mile south from Goshen, map F.

Resolved, That the line of the railroad as it has been surveyed and laid out on map marked "F" and described as follows:

Commencing at a point at the end of the eightieth (80th) mile on the line of the said railroad, south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley Branch of the Central Pacific Railroad (said point of commencement being the northeast quarter (N. E. ¼) of section five (5), township thirty (30) south, range twenty-nine (29) east, Mount Diablo base and meridian) running thence in a southeasterly direction and ending at the termination of the twentieth (20th) mile therefrom in the southeast quarter (S. E. ¼) of section thirty-three (33), township thirty (30), south range thirty-one (31), east Mount Diablo base and meridian, be, and the same is hereby adopted as the route of said railroad between the points named.

The following resolution was offered by E. H. Miller, Jr., and adopted by a unanimous vote:

Resolution adopting line of road San Gorgonio Pass to 1st Indian Wells, map CC.

Resolved, That the line of the railroad as it has been surveyed and laid out on map marked "C C" and described as follows:

Commencing at a point in the southwest quarter (S. W. ¼) of section four (4), township three (3) south, range one (1) west, San Bernardino base and meridian, and running thence in a southeasterly direction fifty (50) miles to a point in the southwest quarter (S. W. ¼) of section twenty-four (24), township five (5) south, range seven (7) east, San Bernardino base and meridian, be and the same is hereby adopted as the route of said railroad between the points named.

* * * * * * * * *

The following resolution was offered by David D. Colton and adopted by a unanimous vote:

Resolution to pay W. D. Co. for road.

Whereas, the Western Development Company has completed one hundred and forty miles under its contract of the date of February 2, 1875, for the construction of the Southern Pacific Railroad, and in accordance with said contract is entitled to receive from this company five million and forty thousand dollars in the first mortgage bonds of the company, and also five million and forty thousand dollars in full paid shares of its capital stock as payment therefor.

Therefore, resolved, That the said one hundred and forty miles of railroad are hereby accepted and the president and secretary are hereby authorized and directed to issue to said Western Development Company the said bonds and stock in accordance with said contract, taking a proper voucher therefor on account.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

October 11, 1876.

A meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Wednesday the eleventh day of October, A. D. 1876, at one o'clock P. M., pursuant to the by-laws.

Present: Directors David D. Colton, E. H. Miller, Jr., H. M. Newhall, N. T. Smith, and J. L. Willcutt, Vice-President David D. Colton presiding.

Absent: Directors Chas. Crocker and Robert Robinson.

As to leasing road to C. P. R. R.

The vice-president stated that an understanding had been had between the officers of this company and of the Central Pacific Railroad Company for the operating of all that portion of the Southern Pacific Railroad south of Goshen upon the same basis as for that portion heretofore operated by it, viz: $250 net per mile per month, and that an agreement was being prepared to date from September first which would be presented at a future meeting for the action of the board.

The following resolution was offered by J. L. Willcutt and adopted by a unanimous vote.

Resolution adopting line of road as per maps.

"Resolved, That the line of the railroad as it has been surveyed and laid out on maps described as follows:

Map G, Goshen to 20 miles west.

"Commencing at Goshen at the initial point of section No. three (3) of the Southern Pacific Railroad (said point of commencement being in the northwest quarter of (N. W. ¼) of section nineteen (19), township eighteen (18) south, range twenty-four (24) east, Mount Diablo base and meridian), running thence in a westerly direction and ending at the termination of the twentieth (20th) mile therefrom in the northeast quarter (N. E. ¼) of section two (2), township nineteen (19) south, range twenty (20) east, Mount Diablo base and meridian.

Map H, to 40th mile from Goshen.

"Commencing at the end of section number eight of the Southern Pacific Railroad (said point of commencement being in the northeast quarter (N. E. ¼) of section two (2), township nineteen (19) south, range twenty (20) east, Mount Diablo base and meridian), running thence in a southwesterly direction and ending at the termination of the twentieth (20) mile therefrom in the northwest quarter (N. W. ¼) of section eleven (11), township twenty (20) south, range seventeen (17) east, Mount Diablo base and meridian.

Map I, 100th to 120 h mile southerly from Goshen.

"Commencing at the end of section No. seven (7) of said railroad (Map F), at the end of the one hundredth (100) mile on the line of the said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley branch of the

Central Pacific Railroad (said point of commencement being in the southeast quarter (S. E. ¼) of section thirty-three (33), township thirty (30) south, range thirty-one (31) east, Mount Diablo base and meridian) running thence in a southeasterly direction and ending at the termination of the twentieth (20) mile therefrom in the northeast quarter (N. E. ¼) of section nineteen (19), township thirty-two (32) south, range thirty-three (33) east, Mount Diablo base and meridian.

Map "J" "I," 120th to 140th mile southerly from Goshen.

"Commencing at the end of section No. ten of said railroad as delineated on map 'I,' at the end of the one hundred and twentieth (120th) mile on the line of the said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley branch of the Central Pacific Railroad (said point of commercement being in the northeast quarter (N. E. ¼) of section nineteen, township thirty-two (32) south, range thirty-three (33) east, Mount Diablo base and meridian, running thence in a southeasterly direction and ending at the termination of the twenty-first and sixty-six one-hundredths (21 66-100) mile therefrom in the northeast quarter (N. E. ¼) of section seventeen (17), township eleven (11) north, range twelve (12) west, San Bernardino base and meridian.

Map DD, from San Fernando northerly to a point 140 miles southerly from Goshen.

"Commencing at the initial point of section number one (1) of said railroad, as delineated on map 'A A,' said point being in the northwest quarter (N. W. ¼) of section three (3), township two (2) north, range fifteen (15) west, San Bernardino base and me-

ridian, running thence northerly and ending at the termination of the seventy-eighth (78th) and fifty-nine one-hundredths (78 59-100) mile therefrom at the terminal point of section number eleven (11) of the Southern Pacific Railroad, authorized by the eighteenth section of the Atlantic & Pacific Railroad Act, approved July 27, 1866, and amendments thereto—as delineated on Map J of said railroad, said point being in the northeast quarter (N. E. ¼) of section seventeen (17), township eleven (11) north, range twelve (12) west, San Bernardino base and meridian,"

be, and the same is hereby, adopted as the route of said railroad between the several points named.

A communication was received from the Western Development Company, reading as follows:

Communication from W. D. Co. as to completion of 246.60 miles road.

San Francisco, October 6, 1876.

To the Honorable Board of Directors, Southern Pacific Railroad:

Gentlemen:

Enclosed I hand you Chief Engineer Gray's estimate of completed road on the Western Development Company's contract with your company, and would respectfully request that the bonds and stock, due for the same, be issued to this company at your earliest convenience.

The statement of our account is as follows, viz:

Total amount of road built, in miles.....246.60
For which we are entitled to in bonds...$ 8,877,600
For which we are entitled to in stock.... 8,877,600

$17,755,200

Have received for 140 miles road built—
In bonds $5,040,000
In stock 5,040,000 $10,080,000

Balance due for 106.60 miles—
Bonds and stock $7,675,200

Yours respectfully,

F. S. DOUTY,
President.

San Francisco, July 31, 1876.

President Western Development Company:

Sir:

I submit the following estimate for work done under your contract to grade and equip the railroad of this company:

Grading and equipping road from Sumner to—
End of Section No. 6, Sta. 11935, 6.35 miles.
End of Section No. 7, Sta. 13008x12 9-10 20.
End of Section No. 8, Sta. 14045x70 3-10 20.
End of Section No. 9, Sta. 15702x39 6-10 20.

Do from Section No. 9 Section No. 1, marked "AA", First Division 80.25
Do from Spadra to San Gorgonio, Second Division 50

Do from San Gorgonio to Indian Wells, Third Division 50

Total miles 246.60

Deduct estimate March 18, 1876.....140

Total miles 106.60

Respectfully submitted,

GEO. E. GRAY,

Chief Engineer.

On motion of E. H. Miller, Jr., the communication was received and ordered to be placed on file.

The following resolution was offered by E. H. Miller, Jr., and being duly seconded, was adopted by a unanimous vote:

Resolution to pay W. D. Co. for road.

Whereas, the Western Development Company has completed one hundred and six and sixty one hundredths (106 60-100) miles road and telegraph line under its contract of February 2, 1875, and in accordance with said contract is entitled to receive as payment therefor seven million six hundred and seventy-five thousand two hundred dollars ($7,675,200) in the stock and bonds of this company (one-half each), therefore be it

Resolved, That the said one hundred and six and sixty one-hundredths miles of railroad be and are hereby accepted, and the president and secretary are hereby authorized and instructed to issue to said Western Development Company the said stock and bonds in accordance with said contract, taking a proper voucher therefor.

D. Co. bills for transportation ordered paid.

Bills were presented for $89,309.71 and $655 from the Western Development Company, being amount paid to Central Pacific Railroad Company for transportation of men engaged on construction of road south of Goshen to August 31, 1876, which, on motion of E. H. Miller, Jr., duly seconded, were ordered to be paid and voucher filed therefor.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

(Signed) J. L. WILLCUTT,
Secty.

Directors' Meeting.

February 7, 1877.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the company's office on Wednesday, February 7, A. D. 1877, at 1 o'clock P. M., pursuant to the by-laws.

Present: Directors Chas. Crocker, David D. Colton, Robert Robinson, E. H. Miller, Jr., N. T. Smith, H. M. Newhall, and J. L. Willcutt, Charles Crocker presiding as president of the board.

A communication was presented from the Western Development Company reading as follows:

San Francisco, February 6, 1877.

Communication from W. D. Co. as to completion of 40 miles road.

"To the President and Board of Directors Southern Pacific Railroad:

"Gentlemen:

"Enclosed I hand you Chief Engineer Gray's report, referring in detail to the completion of that

portion of your road lying between Goshen and Huron, comprising section eight and nine, of twenty miles each, and amounting to forty miles; to which, together with inclosed bill, in favor of W. D. Co., your early attention is respectfuly called.

"Yours respectfully,

"F. S. DOUTY,

"Prest."

"San Francisco, February 5, 1877.

"President Western Development Company:

"Dear Sir:

"I have to report the completion under your contract with the Southern Pacific Railroad Company, forty miles of railroad, commencing at Goshen (Station 0), thence to Huron (Station 2110x13½ feet) the last rail of which was laid January 9, 1877.

"Respectfully yours,

"GEO. E. GRAY,

"Chief Engineer."

S. F., Feb. 6, 1877.

"Southern Pacific Railroad Co.,

"To Western Development Co., Dr.

"For construction of road as follows, viz:

"Section 8 and 9, from Goshen west 40 miles, @ $72,000 per mile, as per contract $2,880,000

"(Half bonds and half stock.)"

On motion of E. H. Miller, Jr., the communication was received and ordered to be placed on file.

The following resolution was offered by David D. Colton, and being duly seconded, was adopted by a unanimous vote:

Authorizing payment to W. D. Co. for road.

Whereas, the Western Development Company has completed forty miles of railroad and telegraph line under its contract dated February 2, 1875, and by terms of said contract is entitled to receive as payment therefor two million eight hundred and eighty thousand dollars ($2,880,000) in the stock and bonds of this company—one-half each—therefore be it

Resolved, That the said forty miles of railroad and telegraph line be and the same are hereby accepted, and the president and secretary are hereby authorized and instructed to issue to said Western Development Company the said stock and bonds in accordance with the terms of said contract, taking a proper receipt therefor.

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

June 8, 1887.

A special meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Friday, June 8, A. D. 1877, at 4 o'clock P. M., pursuant to the call of the president.

Present: Directors Charles Crocker, E. H. Miller, Jr., H. M. Newhall, N. T. Smith, and J. L. Willcutt.

Absent: Directors David D. Colton and Robert Robinson.

The president stated the object of the meeting, whereupon, on motion of E. H. Miller, Jr., the following preambles and resolutions were adopted unanimously:

Appointment of N. H. Alexander for Arizona Territory.

Whereas, on the seventh day of February, 1877, the legislative assembly of the Territory of Arizona passed an act whereby certain grants, powers, franchises and privileges were conferred upon this company, to be exercised, possessed and enjoyed in said territory upon the condition that this company should appoint some person residing in said territory as its attorney in fact, upon whom service of legal process might be made with the same force and effect as if served personally upon the president or other officer or managing agent of this company.

Now, therefore, Resolved, That H. N. Alexander, of Yuma, in said territory, be appointed as the attorney in fact of this company, pursuant to the provisions of said act.

Resolved, further, That letters of attorney in due form of law be prepared under the corporate seal of this company, and signed by its president, and countersigned by its secretary, and delivered by the president of the company to said Alexander, with instructions to file the same, or a copy thereof, in the office of the secretary of the territory aforesaid.

The following preamble and resolution was offered by J. L. Willcutt, and on motion, duly seconded, was adopted by a unanimous vote:

Resolution dating Series D of Bonds.

Whereas, one of the conditions of the mortgage executed by this company on the first day of April, A. D. 1875, provides that Series "A" of its mortgage bonds shall bear date of April 1, 1875, and the several succeeding series such dates respectively as the board of directors may direct; therefore, be it

Resolved and ordered, That Series "D" of said bonds shall bear the date of October 1, 1876, and that the first interest coupon thereon shall be due and payable on the first day of April, A. D. 1877.

No further business appearing before the board and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

(Signed) J. L. WILLCUTT,
Secretary.

Note.—The power of attorney issued under the foregoing resolution reads as follows:

Copy of power of attorney to H. N. Alexander.

"Whereas, on the seventh day of February, 1877, the legislative assembly of the Territory of Arizona passed an act entitled 'An act to secure the construction and operation of certain railroad and telegraph lines and to provide for other matters relating thereto, whereby certain franchises, grants, powers, rights and privileges were conferred upon a corporation therein named, towit: the Southern Pacific Railroad Company, upon the express condition that said corporation should appoint, under its corporate seal, an attorney residing in said territory, upon whom process of law might be served with the same force and

effect as if served personally upon the president or other officer, or managing agent of said corporation,"

"Now, therefore, know all men by these presents, that the said Southern Pacific Railroad Company has appointed and hereby does appoint H. N. Alexander as its attorney pursuant to said statute, to reside in said territory with full power to receive and accept service of process of law on behalf of said corporation, with the same force and effect as if served personally upon the president or other officer or managing agent of said corporation."

"In testimony whereof, said corporation has caused these presents to be signed by its president and countersigned by its secretary and its corporate seal to be hereunto affixed, on this the eighth day of June, 1877."

(Signed) CHAS. CROCKER,
President S. P. R. R. Co.

(Signed) J. L. WILLCUTT,
Secy. S. P. R. R. Co.

[Seal]

Acknowledged before
CHAS J. TORBERT,
Commissioner for Arizona Territory.

Directors' Meeting.

June 20, 1877.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Wednesday, June 20, A. D. 1877, at one o'clock P. M., in pursuance of the by-laws.

Present: Directors Chas. Crocker, David D. Colton, Robert Robinson, E. H. Miller, Jr., H. M. Newhamm, N. T. Smith, and J. L. Willcutt.

The following resolution was offered by N. T. Smith, and being duly seconded, was adopted by a unanimous vote:

Resolution adopting line of road as per maps.

Resolved, That the line of the railroad as it has been surveyed and laid out on maps described as follows:

Map EE, Indio to 50 mile southeast.

"Commencing at Indio, at the end of Section No." three (3), as delineated on map "C C," said point of commencement being in the southwest quarter (S. W. ¼) of section twenty-four (24) township five (5) range seven (7) east, San Bernardino base and meridian, and running thence in a southeasterly direction fifty (50) miles to a point in the southwest quarter (S. W. ¼) of section twenty-five (25), township ten (10) south, range thirteen (13) east, "San Bernardino base and meridian."

Map "FF" "EE" from end of section 5 to Colorado River 68.37 m.

"Commencing at the end of section No. five (5)," as delineated on map "E E," said point of commencement being in the southwest quarter (S. W. ¼) of section twenty-five (25), township ten (10) south, range thirteen (13) east, San Bernardino base and meridian, and running thence in a southeasterly direction sixty-eight and thirty-seven one hundredths ((68 37-100) miles to a point in the northeast quarter (N. E. ¼) of section thirty-five (35), township sixteen (16) south, range twenty-two (22) east, San Bernardino base "and meridian. . . . . " be and the same are hereby

adopted as the route of said railroad between the points named.

* * * * * * * * *

The following resolution was offered by David D. Colton, and being duly seconded, was adopted by a unanimous vote:

Resolution to pay W. D. Co. for 118.31 miles road.

Whereas, the Western Development Company has completed 118 31-100 miles of railroad and telegraph line under its contract of February 2, 1875, and in accordance with said contract is entitled to receive as payment therefor ($8,518,320.00) eight million five hundred and eighteen thousand three hundred and twenty dollars in the stock and bonds of this company (one-half each); therefore be it

Resolved, That the said 118 31-100 miles of railroad and telegraph line be and are hereby accepted, and and instructed to issue to said Western Development the president and secretary are hereby authorized Company the said stock and bonds in accordance with said contract, taking a proper voucher therefor.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

August 8, 1877.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the company's office on Wednesday, August 8, A. D. 1877, at 1 o'clock P. M., in pursuance of the by-laws.

Present: Directors Chas. Crocker, David D. Colton, Jerome Madden, N. T. Smith, H. M. Newhall, Chas. Mayne, and J. L. Willcutt.

On motion of David D. Colton the minutes of the last meeting of the board were read and approved.

The president referred to the contract made with the Contract & Finance Company on May 1, A. D. 1871, for the construction and equipment of this road and the assignment of the same to the Western Development Company. He gave an explanation of the purport and intent of the new contract as understood between the two companies.

Whereupon, the following preamble and resolution was offered by H. M. Newhall and adopted by a unanimous vote:

Resolution to transfer $10,000,000 to construction account.

Whereas, heretofore, towit, on the first day of May, 1871, this company entered into a contract with a certain corporation known as the Contract & Finance Company for the construction and equipment of its road and telegraph, then estimated to be seven hundred miles in length, whereby it agreed to pay to said Contract & Finance Company, in consideration of construction and equipment as aforesaid, all

of its capital stock not then subscribed for or issued, and all the bonds which it was authorized to issue, towit: $40,000 per mile, aggregating the sum of $28,000,000—$5,000,000 in stock, and $5,000,000 in bonds to be delivered on the execution of said contract, and the remainder pro rata per mile as the construction progressed. And whereas, said $5,000,000 in stock and said $5,000,000 in bonds was delivered to said Contract & Finance Company, as provided in said contract;

And whereas, said stock and bonds were entered in the books of this company as debits against said Contract & Finance Company, and still remain so entered;

And whereas, this company had paid and delivered to said Contract & Finance Company in bonds, including the $5,000,000 aforesaid, the sum of $13,596,000 on account of construction, and $750,000 to the holders of old bonds of the company in redemption thereof prior to the assignment of said contract as hereinafter stated;

And whereas, afterwards, towit; on the —— day of January, 1875, after a partial performance thereof, said Contract & Finance Company, with the knowledge and consent of this company, assigned said contract to a corporation known as the Western Development Company, upon the condition that said last named company should perform it to the entire satisfaction of this company for and in consideration of so much of the stock and bonds of this company mentioned in said contract as had not theretofore

been paid out and delivered to said Contract & Finance Company, and to other parties in redemption of old bonds of the company, as aforesaid;

And whereas, afterwards this company, acting under certain laws of Congress and the State of California, amended its articles of incorporation so as to enable it to construct additional lines of road and telegraph provided for in said acts of Congress, aggregating 750 miles or thereabouts, and to issue additional bonds for the construction thereof, and whereas this company did thereupon authorize the issue of bonds to the amount of $46,000,000, $14,346,000 of which were used in the redemption of the bonds which had been issued previously as aforesaid.

And whereas, afterwards, towit, on the second day of February, 1875, this company entered into another contract with the Western Development Company for the construction and equipment of its road and telegraph, including the unfinished portions provided for in said contract first aforesaid, as well as the additional road and telegraph provided for in said amended articles of incorporation, whereby this company agreed, for and in consideration of such construction and equipment, to pay and deliver to said Western Development Company $31,654,000 in the stock of the company and an equal amount in the bonds of the company, making together with the $14,346,000 paid out as aforesaid, $46,000,000, being the full amount of the bonds authorized to be issued as aforesaid—it being the true

intent and meaning of said contracts that said Con- bonds of the company in part payment for the con- opment Company should together receive all the tract & Finance Company and said Western Devel- struction and equipment of the road and telegraph of the company, as provided in said contracts; yet, nevertheless it appears by the books of the company, as hereinbefore stated, that said Contract & Finance Company is indebted to this company to the amount of $5,000,000 in its bonds and an equal amount in its stock, contrary to the true intent and meaning of said contracts.

Now, therefore, resolved, that the secretary be directed and instructed, and he is hereby instructed and directed, to cancel said debts and transfer the same to his construction account, where the same properly belongs.

The following resolution was offered by Chas. Mayne, and on motion, duly seconded, was adopted by a unanimous vote:

Amending Section 5 of By-laws.

Resolved, That section 5 of the by-laws be amended by substituting the word "Tuesday" for "Wednesday," the said section then reading as follows: "Sec-

Directors' meetings.

tion 5. The regular weekly meetings of the directors shall be held on Tuesday of each week at one o'clock in the afternoon, at the office of the company, without further notice than the operation of this by-law, and four or more of the directors shall constitute a

Quorum special meetings.

quorum at all meetings for the transaction of business. Special meetings may at any time be called by

the president, or any three members of the board, to convene at such time and place as may be appointed, but it shall require a majority of the whole board to adopt any measure."

No further business appearing before the board and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

February 12, 1878.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the company's office on Tuesday, February 12, A. D. 1878, at 1 o'clock P. M., pursuant to the by-laws.

Present: Directors Chas. Crocker, Chas. Mayne, N. T. Smith, Jerome Madden and J. L. Willcutt, President Chas. Crocker presiding.

Absent: Directors David D. Colton and H. M. Newhall.

The following resolution was offered by Chas. Mayne and adopted by a unanimous vote:

(Texas Pacific R. R.) Resolution as to construction of road east of Colorado River (Amended pp. 312, 319).

Whereas, this company has constructed its road to its proposed junction with the Texas Pacific Railroad at or near the Colorado river, in the southeastern part of this state;

And whereas, the eastern portion of the road will be of little value to the company and of litle convenience to the public so long as it remains without

a connecting road running to the East on or near the line of the so-called Texas Pacific Railroad;

And whereas, it is of vital importance to the company to secure as speedily as possible a through railroad connection with the commercial centers of the East;

And whereas, the Texas Pacific Railroad Company has failed to comply with the conditions imposed upon it by an act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3, 1871, and the amendments thereto; now, therefore

Resolved: First. That this company, if so authorized and empowered by Congress, will undertake the construction and equipment of the entire railroad and telegraph line, provided for in said act, lying to the east of the eastern boundary line of the State of California, or to construct the same to a point of connection with said Texas Pacific Railroad Company, upon the same considerations, terms, conditions, restrictions, immunities, powers, rights, and privileges which by said acts were granted to and imposed upon said Texas Pacific Railroad Company, and will agree to complete the same within six years after the passage of an act of Congress vesting in it all the grants, powers, rights, privileges and immunities, and imposing upon it all the conditions, limitations and restrictions respectively vested in and imposed upon said Texas Pacific Railroad Company by

said acts, and will ask of Congress no other or further aid.

Resolved: Second. That this company will pro rate with all Eastern lines of transportation on all through traffic between its eastern terminus and any part of the Pacific, which it may reach by its own road, or by any line it may control by lease or otherwise.

Resolved: Third. That C. P. Huntington be and he hereby is authorized to submit the foregoing proposition to Congress and urge its acceptance.

Resolved: Fourth. That a copy of these resolutions under the seal of the company and signed by the president and secretary, be forwarded to said Huntington.

The following resolution was offered by Chas. Mayne and adopted by a unanimous vote:

Resolution as to grading Kentucky Street.

Whereas, it is proposed to grade Kentucky street and the crossings thereof, lying between Sierra street and Centre street;

And whereas, this company owns property on said street;

Now, therefore, resolved, That this company join in a petition to the board of supervisors of the city and county of San Francisco, asking that said street be graded.

Resolved, further, That Chas. Crocker, president of this company, be, and he is hereby authorized to sign such petition on behalf of this company, and to attach thereto its corporate seal.

The following resolution was offered by N. T. Smith and adopted by a unanimous vote:

Resolution to give Quitclaim Deed to I. M. Hellman.

Resolved, That the president and secretary of the Southern Pacific Railroad Company be authorized and instructed to prepare and execute in behalf of said company a quitclaim deed conveying to Sarah A. Wicks, the party now having the equitable interest in the same, all that certain property conveyed to said company by I. M. Hellman by deed dated the ——— day of August, A. D. 1873, and acknowledged by him before A. W. Potts, county clerk of Los Angeles county, California, August 20, 1873; said deed being recorded on said twentieth day of August, A. D. 1873, at 5 minutes past 5 P. M., in Book 25 of Deeds, page 633, in the recorder's office of Los Angeles county. Cal., the land described therein not having been used as a portion of the right of way of said Southern Pacific Railroad, for which it was intended when said deed was executed by said I. M. Hellman.

No further busin appearing before the board, and the foregoing r..nutes having been read and approved, on motion, duly seconded, the meeting adjourned.

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

February 21, 1878.

A special meeting of the board of directors of the Southern Pacific Railroad Company was held at the

company's office on Thursday, February 21, A. D. 1878, at one o'clock P. M., pursuant to the call of the president.

Present: Directors Chas. Crocker, Charles Mayne, H. M. Newhall, N. T. Smith, Jerome Madden and J. L. Willcutt, President Charles Crocker presiding.

Absent, Director David D. Colton.

The object of the meeting having been stated by the president, the following resolution was offered by Charles Mayne and adopted by a unanimous vote:

(Texas Pacific R. R.) to construct road east of Colorado River (2nd amendment).

Whereas, this company has constructed its road to its proposed junction with the Texas Pacific Railroad at or near the Colorado river near the southeastern line of this State;

And whereas, the eastern portion of the road will be of little value to the company and of little convenience to the public so long as it remains without a connecting road running to the east on or near the line of the so-called Texas Pacific Railroad;

And whereas, it is of vital importance to the company to secure as speedily as possible a through railroad connection with the commercial centers of the East;

And whereas, the Texas Pacific Railroad Company has failed to comply with the conditions imposed upon it by an act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3, 1871, and the amendments thereto; now, therefore,

Resolved: First. That this Company, if so authorized and empowered by Congress, will undertake the construction and equipment of the entire railroad and telegraph line provided for in said act, lying to the east of the eastern boundary line of the State of California, or to construct the same to a point of connection with said Texas Pacific Railroad Company, upon the same consideration, terms, conditions, restrictions, immunities, powers, rights and privileges which, by said acts, were granted to and imposed upon said Texas Pacific Railroad Company, and will agree to complete the same within six years after the passage of an act by Congress, vesting in it all the grants, powers, rights, privileges and immunities, and imposing upon it all the conditions, limitations, and restrictions respectively vested in and imposed upon said Texas Pacific Railroad Company by said acts, and will ask of Congress no other or further aid.

Resolved: Second. That this company will pro rate with all Eastern lines of transportation on all through traffic between its eastern terminus and any part of the Pacific, which it may reach by its own road, or by any line it may control by lease or otherwise.

Resolved: Third. Further, and this company hereby agrees that if the foregoing proposition is accepted by the United States, the rates of fare and freightage from the eastern terminus of the proposed road to San Pedro, Santa Monica and San Diego in

California may be established and regulated from time to time by Congress.

Resolved: Fourth. That C. P. Huntington be and he hereby is authorized and empowered, on behalf of this company, to submit the foregoing proposition to Congress, and urge its acceptance.

Resolved: Fifth. That a copy of these resolutions, under the seal of the company, and signed by the president and secretary, be forwarded to said Huntington.

No further business appearing before the board and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

(Signed) J. L. WILLCUTT,
Secretary.

Special Meeting.

June 31, 1882.

A special meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Monday, July 31, 1882, at half past one o'clock P. M., pursuant to the call of the vice-president.

Present Directors Chas. F. Crocker, Moses Hopkins, N. T. Smith, W. V. Huntington and J. L. Willcutt, Vice-President Chas. F. Crocker occupying the chair (in the absence of the president).

Absent: Directors Charles Crocker and Charles Mayne.

The meeting was called to order by the vice-president, who stated the object of it to be the acceptance of the first section of road (40) miles) on the Mojave line to the Needles.

* * * * * * * * *

The following resolution was offered by Moses Hopkins and adopted by a unanimous vote:

Resolution authorizing payment to P. I. Co. for completed road.

Whereas, the Improvement Company has completed forty miles of road and telegraph line under its contract of eighth day of February, 1882, and in accordance with said contract is entitled to receive as payment therefor $2,200,000 in the bonds and stock of this company, towit: $1,000,000 in bonds and $1,200,000 in stock.

Therefore, be it resolved, That the said forty (40) miles of road be and are hereby accepted, and the vice-president (in the absence of the president) and the secretary of this company are hereby authorized to issue to said Pacific Improvement Company the said amount of bonds and stock, in accordance with said contract, and taking a proper voucher therefor.

The following resolution was offered by W. V. Huntington and adopted by a unanimous vote:

Resolution authorizing the Vice President to sign 480 Bonds.

Resolved, That in the absence from this State of Charles Crocker, the president of this company, Chas. F. Crocker, the vice-president of the company, be and he is hereby authorized and directed to sign four hundred and eighty (480) of the first mortgage bonds of the company, numbered respectively from 31,521 to 32,000 inclusive, and also the certificates of

stock, which the said "Pacific Improvement Company" are entitled to receive, under the foregoing resolution.

No further business appearing and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

September 5, 1882.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Tuesday, the fifth day of September, A. D. 1882, at one o'clock P. M., in pursuance of the by-laws.

Present: Directors Chas. F. Crocker, Charles Mayne, W. V. Huntington, N. T. Smith and J. L. Willcutt, Vice-President Chas. F. Crocker presiding.

Absent: Directors Charles Crocker and Moses Hopkins.

* * * * * * * * * *

The following resolution was offered by Charles Mayne and adopted by a unanimous vote:

Resolution to pay P. I. Co. for 12 miles of road completed on Mojave line.

Whereas, the Pacific Improvement Company has completed twelve (12) miles of road and telegraph line under its contract of eighth day of February, 1882, and in accordance with said contract is entitled to receive as payment therefor, $660,000.00 in the bonds and stock of this company, towit, $300,000.00 in bonds and $360,000.00 in stock.

Therefore, be it resolved, That the said twelve (12) miles of road be and the same are hereby accepted, and the vice-president (in the absence of the president) and the secretary of this company are hereby authorized and instructed to issue to said Pacific Improvement Company the said amount of bonds and stock, in accordance with said contract, and taking a proper voucher therefor.

* * * * * * * * *

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

October 17, 1882.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company in the city of San Francisco on Tuesday, the seventeenth day of October, A. D. 1882, at one o'clock P. M., in pursuance of the by-laws.

Present: Directors Chas. F. Crocker, Charles Mayne, N. T. Smith, W. V. Huntington and J. L. Willcutt, Vice-President Chas. F. Crocker presiding.

Absent: Directors Charles Crocker and Moses Hopkins.

* * * * * * * * *

The vice-president stated that the Pacific Improvement Company had completed eighteen miles more of road on the Mojave line, for which a bill had been presented.

Whereupon, the following communications were presented and read by the secretary, and on motion were received and ordered to be placed on file:

* * * * * * * * * *

Chief Engineer's estimate 18 miles completed road on Mojave line.

"San Francisco, Oct. 13, 1882."

President and Secretary
Pacific Improvement Co.

Sir:

I submit the following estimate for work done under your contract to grade and equip the railroad of this company, viz: commencing at a point (52) fifty-two miles eastward of Mojave on the main line—station 2746x33 8-10 to station 3697, a distance of (18) eighteen miles, or a total distance of (70) miles eastward of Mojave.

The completed work includes all the grading and track equipment, sidings, etc.

Respectfully yours,
(Signed) GEO. E. GRAY,
Chief Engineer.

P. I. Co. bill for 18 miles of road completed on Mojave line.

Southern Pacific Railroad Co.,
To Pacific Improvement Co., Dr.

Oct. 13, for completed road as follows:

From station 2746x33 8-10 to station 3697, distance of 18 miles,

@ $25,000 in bonds per mile..$450,000
@ $30,000 in stock per mile... 540,000

$990,000"

The following resolution was offered by N. T. Smith and adopted by a unanimous vote:

Resolution to pay P. I. Co. for 18 miles of road completed on Mojave line.

Whereas, the Pacific Improvement Company has completed eighteen (18) miles of road and telegraph line under its contract of eighth February, 1882, and in accordance with said contract is entitled to receive as payment therefor $990,000 in the bonds and stock of this company, towit: $450,000 in bonds and $540,000 in stock;

Therefore, be it resolved, That the said eighteen (18) miles of road be and the same are hereby accepted, and the vice-president (in the absence of the president) and the secretary of this company, are hereby authorized and instructed to issue to said Pacific Improvement Company the said amount of bonds and stock, in accordance with said contract, taking a proper voucher therefor.

No further business appearing and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

November 21, 1882.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company in the city of San Francisco on Tuesday, the 21st November, A. D. 1882, at one o'clock P. M., in pursuance of the by-laws.

Present: Directors Chas. F. Crocker, Charles Mayne, N. T. Smith, Moses Hopkins, W. V. Huntington and J. L. Willcutt, Vice-President Chas. F. Crocker presiding.

Absent: Director Charles Crocker.

* * * * * * * * *

The following resolution was offered by Charles Mayne and adopted by a unanimous vote:

Resolution to pay P. I. Co. for 30 miles of road completed on Mojave line.

Whereas, the Pacific Improvement Company has completed thirty (30) miles of road and telegraph line, under its contract of eighth day of February, 1882, and in accordance with said contract is entitled to receive as payment therefor $1,650,000 in the bonds and stock of this company, towit, $750,000 in bonds and $900,000 in stock.

Therefore, be it resolved, that the said thirty (30) miles of road be and the same are hereby accepted, and the vice-president (in the absence of the president) and the secretary of this company are hereby authorized and instructed to issue to said Pacific Improvement Company the said amount of bonds and stock, in accordance with said contract, taking a proper voucher therefor.

No further business appearing and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

December 26, 1882.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company in the city of San Francisco, on Tuesday, the twenty-sixth day of December, A. D. 1882, at one o'clock P. M., in pursuance of the by-laws.

Present: Directors Crocker, Chas. F. Crocker, Charles Mayne, W. V. Huntington, N. T. Smith and J. L. Willcutt, President Charles Crocker presiding.

Absent: Director Moses Hopkins.

* * * * * * * *

The following resolution was offered by Charles Mayne and adopted by a unanimous vote:

Resolution to pay P. I. Co for 20 miles of road completed on Mojave line.

Whereas, the Pacific Improvement Company has completed twenty miles of road and telegraph line, under its contract of 8th February, 1882, viz: from station 5307x to 6360x, and in accordance with said contract is entitled to receive as payment therefor $1,100,000 in the bonds and stock of this company, viz: ($500,000) five hundred thousand dollars in bonds and ($600,000) six hundred thousand dollars in stock.

Therefore, be it resolved, That the said twenty (20) miles of road be and the same are hereby accepted and the president and secretary of this company be and they are hereby authorized and instructed to issue to said Pacific Improvement Company,

the said amount of bonds and stock, in accordance with said contract—taking a proper voucher therefor.

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(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

January 30, 1883.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company in the city of San Francisco, on Tuesday, the thirtieth day of January, A. D. 1883, at one o'clock P. M., in pursuance of the by-laws.

Present: Directors Chas. F. Crocker, Moses Hopkins, Charles Mayne, N. T. Smith, W. V. Huntington and J. L. Willcutt, Vice-President Chas. F. Crocker presiding.

Absent: Director Charles Crocker.

* * * * * * * *

The following resolution was offered by Charles Mayne and adopted by a unanimous vote:

Resolution to pay P. I. Co. for 20 miles of road completed on Mojave line.

Whereas, the Pacific Improvement Company has completed twenty miles of road and telegraph line under its contract of 8th February, 1882, viz: from station 6360 x to station 6969 x Norton's line or 6141 x Hood's line (surveyed westward) to 6713 x Hood's line, and in accordance with said contract, is entitled to receive as payment therefor $1,100,000—in the bonds and stock of this company, viz: ($500,000)

five hundred thousand dollars in bonds, and ($600,000) six hundred thousand dollars in stock.

Therefore, be it resolved, that the said twenty (20) miles of road be and the same are hereby accepted, and the president and secretary of this company be and they are hereby authorized and instructed to issue of said Pacific Improvement Company the said amount of bonds and stock, in accordance with said contract—taking a proper voucher therefor.

* * * * * * * *

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

February 20, 1883.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company, in the city of San Francisco, on Tuesday, the twentieth day of February, A. D. 1883, at one o'clock p. m., in pursuance of the by-laws.

Present: Directors Charles Crocker, W. V. Huntington, Chas. F. Crocker, N. T. Smith, Charles Mayne, and J. L. Willcutt, President Charles Crocker presiding.

Absent, Director Moses Hopkins.

* * * * * * *

The following resolution was offered by Charles Mayne, and adopted by a unanimous vote:

Resolution to pay P. I. Co. for 20 miles of

Whereas, the Pacific Improvement Company has completed twenty miles of road and telegraph line,

road completed on Mojave line.

under its contract of 8th February, 1882, viz.: from station 5713 x to 4657 x, Hood's numbering, and in accordance with said contract, is entitled to receive as payment therefor ($1,100,000) one million one hundred thousand dollars in the bonds and stock of this company, viz.: ($500,000) five hundred thousand dollars in bonds, and ($600,000) six hundred thousand dollars in stock.

Therefore, be it resolved, that the said twenty (20) miles of road be and the same are hereby accepted, and the president and secretary of this company be and they are hereby authorized and instructed to issue to said Pacific Improvement Company, the said amount of bonds and stock, in accordance with said contract—taking a proper voucher therefor.

* * * * * * *

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

February 27, 1883.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company, in the city of San Francisco, on Tuesday, the twenty-seventh day of February, A. D. 1883, at one o'clock P. M., in pursuance of the by-laws.

Present: Directors Charles Crocker, Chas. F. Crocker, W. V. Huntington, N. T. Smith, Charles

Mayne, and J. L. Willcutt, President Charles Crocker presiding.

Absent: Director Moses Hopkins.

* * * * * * *

The following resolution was offered by Charles Mayne and adopted by a unanimous vote:

Resolution to pay P. I. Co. for 20 miles of road completed on Mojave line.

Whereas, the Pacific Improvement Company has completed twenty miles of road and telegraph line, under its contract of 8th February, 1882, viz.: from station 4657 x to station 3601 x Hood's line (surveyed westward), and in accordance with said contract, is entitled to receive as payment therefor ($1,100,000) one million one hundred thousand dollars in the bonds and stocks of this company, viz.: ($500,000) five hundred thousand dollars in bonds, and ($600,000) six hundred thousand dollars in stock.

Therefore, be it resolved, that the said twenty (20) miles of road be and the same are hereby accepted, and the president and secretary of this company be and they are hereby authorized and instructed to issue to said Pacific Improvement Company the said amount of bonds and stock, in accordance with said contract, taking a proper voucher therefor.

* * * * * * *

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

March 6, 1883.

A regular meeting of the board of directors of the Southern Pacific Raliroad Company was held at the

office of the company, in the city of San Francisco, on Tuesday, the sixth of March, A. D. 1883, at one o'clock P. M., in pursuance of the bylaws.

Present: Directors Charles Crocker, Chas. F. Crocker, W. V. Huntington, N. T. Smith, Charles Mayne, and J. L. Willcutt, President Charles Crocker presiding.

Absent: Director Moses Hopkins.

* * * * * * *

The following resolution was offered by Chas. F. Crocker and adopted by a unanimous vote:

Resolution to pay P. I. Co. for 20 miles of road completed on Mojave line.

Whereas, the Pacific Improvement Company has completed twenty miles of road and telegraph line under its contract of 8th February, 1882, viz.: from station 3601 x to station 2545 x Hood's line (surveyed westward), and in accordance with said contract is entitled to receive as payment therefor ($1,100,000) one million one hundred thousand dollars in the bonds and stocks of this company, viz.: ($500,000) five hundred thousand dollars in bonds, and ($600,000) six hundred thousand dollars in stock.

Therefore, be it resolved, that the said twenty (20) miles of road be and the same are hereby accepted, and the president and secretary of this company be and they are hereby authorized and instructed to issue to said Pacific Improvement Company the said amount of bonds and stock, in accordance with said contract, taking a proper voucher therefor.

No further business appearing, and the foregoing minutes having been read and approved, on motion duly seconded the meeting was adjourned.

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

March 20, 1883.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company, in the city of San Francisco, on Tuesday, the twentieth day of March, A. D. 1883, at one oc'clock p. m., in pursuance of the bylaws.

Present: Directors Charles Crocker, Chas. F. Crocker, W. V. Huntington, N. T. Smith, Charles Mayne, and J. L. Willcutt, President Charles Crocker presiding.

Absent: Director Moses Hopkins.

* * * * * * *

The following resolution was offered by Chas. F. Crocker and adopted by a unanimous vote:

Resolution to pay P. I. Co. for 20 miles of road completed on Mojave line.

Whereas, the Pacific Improvement Company has completed twenty miles of road and telegraph line, under its contract of 8th February, 1882, viz.: from station 2545 x to station 1489 x Hood's line (surveyed westward), and in accordance with said contract is entitled to receive as payment therefor ($1,100,000) one million one hundred thousand dollars in the bonds and stock of this company, viz.: ($500,000) five hundred thousand dollars in bonds, and ($600,000) six hundred thousand dollars in stock.

Therefore, be it resolved, that the said twenty (20) miles of road be and the same are hereby accepted, and the president and secretary of this company be and they are hereby authorized and instructed to issue to said Pacific Improvement Company the said amount of bonds and stock, in accordance with said contract, taking a proper voucher therefor.

* * * * * * *

(Signed) J. L. WILLCUTT,
Secretary.

Directors' Meeting.

April 24, 1883.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Tuesday, the twenty-fourth day of April, A. D. 1883, at one o'clock P. M., pursuant to its bylaws.

Present: Directors Charles Crocker, Chas. F. Crocker, Charles Mayne, W. V. Huntington, N. T. Smith, and J. L. Willcutt, President Charles Crocker presiding.

Absent: Director Moses Hopkins.

* * * * * * *

On motion of N. T. Smith, seconded by Charles Mayne, the following resolution was adopted by a unanimous vote:

Resolution to pay P. I. C. for same.

Whereas, the Pacific Improvement Company has completed the line of road from Mojave to the Colorado river, near the Needles; and

Whereas, there is due to the said Pacific Improvement Company, under its contract of 8th February, 1882, the sum of ($1,237,885) one million two hundred and thirty-seven thousand eight hundred and eighty-five dollars for the construction of said road and telegraph line from station 1489 x to station 300 x 79 being to the west bank of the Colorado river—a distance of twenty-two and five hundred and seven one-thousandths miles, and in accordance with said contract it is entitled to receive said sum in bonds and stock of this company, viz.: in bonds five hundred and sixty-two thousand six hundred and seventy-five dollars (as near as may be), and in stock six hundred and seventy-five thousand two hundred and ten dollars (as near as may be).

Therefore, be it resolved, that the said twenty-two and five hundred and seven one-thousandths miles of road be and the same are hereby accepted, and the president and secretary of this company be and they are hereby authorized and instructed to issue to said Pacific Improvement Company the amount of five hundred and sixty-two thousand dollars in bonds, and the amount of six hundred and seventy-five thousand two hundred dollars in stock, in accordance with said contract, taking a proper voucher therefor, and the secretary is further instructed to place the remaining amount of six hundred and eighty-five dollars to the credit of said Pacific Improvement Company, on open account.

* * * * * * *

(Signed) J. L. WILLCUTT,
Secretary.

I hereby certify that the foregoing ninety-three pages have been compared by me with the original thereof, and I find them to be a full, true and correct copy of those portions of the minutes of the board of directors of the Southern Pacific Railroad Company offered in evidence before me on behalf of the complainants on cross-examination of defendant's witness J. L. Willcutt.

STEPHEN POTTER,
Special examiner.

San Francisco, October 14, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Mr. REDDING.—Defendants offer in evidence by reference, in the same manner that we offered yesterday the postmaster general's reports, the report of the auditor of railroad accounts for 1880, officially published as follows:

"Annual report of the auditor of railroad accounts, made to the secretary of the interior for the year ending June 30, 1880. Washington Government Printing Office, 1880," for the purpose of showing the relations between the Southern Pacific Railroad Company and the Government of the United States, with reference to the accounts and reports rendered by the Southern Pacific Railroad Company to the Government of the United States, in accordance with the instructions of Congress, given to the auditor of railroad accounts, and I ask that they be referred to by title only, as it is stipulated that the volume being an official publication is before the Court. Is that right, Mr. Call, subject to your objections?

Mr. CALL.—I have no objections to the mode of their being offered, and it may have the same effect as though the volume referred to was filed in the case as an exhibit.

I object to it upon the following grounds: as incompetent, immaterial and irrelevant and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the act of Congress of March 3, 1871, by the terms and conditions of said act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States, in each case of consolidation, all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad

Company; and upon the further ground that the records of the interior department, and of the United States land office at Los Angeles, and the United States land office at San Francisco, and the records of the office of the secretary of state for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.

Mr. REDDING.—You do not object to the incompetency of the evidence, as not being the best evidence of the facts therein stated, do you?

Mr. CALL.—I waive any objection to the mode and manner of offering the document, and consent that it may be made by reference with the same effect as if it was now filed before the special examiner as an exhibit in the case duly offered, but I do object to it upon the grounds stated.

Mr. REDDING.—Defendants next offer in evidence the report of the commissioner of railroads for 1881, officially published as follows:

"Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior, for the year ending June 30, 1881. Washington. Government Printing Office, 1881."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the report of the commissioner of railroads for 1882, officially published, as follows:

"Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior, for the year ending

June 30, 1882. Washington. Government Printing Office. 1882."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the report of the commissioner of railroads for 1883, officially published, as follows:

"Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior, for the year ending June 30, 1883. Washington. Government Printing Office, 1883."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the report of the commissioner of railroads for 1884, officially published, as follows:

"Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior, for the year ending June 30, 1884. Washington. Government Printing Office. 1884."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the report of the commissioner of railroads for 1885, officially published, as follows:

"Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior, for the year ending June 30, 1885. Washington. Government Printing Office. 1885."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the report of the commissioner of railroads for 1886, officially published, as follows:

"Annual Report of the Commissioner of Railroads, made to the secretary of the interior, for the year ending June 30, 1886. Washington. Government Printing Office. 1886."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the report of the commissioner of railroads for 1887, officially published, as follows:

"Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior, for the year ending June 30, 1887. Washington. Government Printing Office. 1887."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the report of the commissioner of railroads for 1888, officially published, as follows:

"Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior, for the year ending June 30, 1888. Washington. Government Printing Office. 1888."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the report of the commissioner of railroads for 1889, officially published, as follows:

"Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior, for the year ending June 30, 1889. Washington. Government Printing Office. 1889."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the

report of the commissioner of railroads for 1890, officially published, as follows:

"Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior, for the year ending June 30, 1890. Washington. Government Printing Office. 1890."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the report of the commissioner of railroads for 1891, officially published, as follows:

"Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior for the year ending June 30, 1891. Washington. Government Printing Office. 1891."

(Same objection.)

Mr. REDDING.—Defendants next offer in evidence the report of the commissioner of railroads for 1892, officially published, as follows:

"Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior, for the year ending June 30, 1892. Washington. Government Printing Office. 1892."

(Same objection.)

Mr. REDDING.—These are all offered by reference under Mr. Call's stipulation, as official publications from the government printing office, and for the purpose of showing the receipt of the reports of the Southern Pacific Railroad Company sent to the commissioner of railroads and set forth by him in the said annual reports to Congress and to the various officers of the Government.

Mr. CALL.—All under the same objections.

Testimony of CHARLES J. WILDER.

CHARLES J. WILDER called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

Mr. REDDING.—Q. What is your present occupation?

A. I am freight auditor of the Southern Pacific Company.

Q. How long have you occupied that position?

A. Since the company came into existence.

Q. In 1885? A. In 1885; yes, sir.

Q. As auditor of the Southern Pacific Company, do you have anything to do with the freight accounts of the Southern Pacific Railroad Company?

A. Only in so far as they are covered by their relations to the Southern Pacific Company.

Q. Do the accounts for freight transported over the line of the Southern Pacific Railroad Company between Mojave, by the way of Los Angeles, to Fort Yuma, in any way come under your inspection or official action?

A. Yes, sir.

Q. In what way?

A. All the accounts covering freight of any character moved over that line are kept by me, kept in my office.

Q. Has the Southern Pacific Railroad Company, through its lessee, the Southern Pacific Company, any relations with the Government of the United States between the points named, with reference to the transpor-

tation of governmental effects over the line of the Southern Pacific Railroad Company?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company by the act of Congress of March 3, 1871, by the terms and conditions of said act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation, in evidence herein, marked Master's Exhibits 1, 2 and 3, and defendants' exhibits before the special examiner Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation, all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the

interior department, and of the United States land office at Los Angeles, and the United States land office at San Francisco, and the records of the office of the secretary of state for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.)

A. Yes, sir; such freight is being constantly transported.

Q. What is the method of the Government obtaining transportation of freight—I am now speaking of other than postal service—over the line of the Southern Pacific Railroad Company, between the points named?

(Same objection.)

A. Freight is presented in exactly the same manner that any freight from a commercial house would be, and is handled and carried through in the same way.

Q. Who presents the freight on behalf of the Government?

(Same objection.)

A. Usually the freight is shipped through the quartermaster's department, and their teamsters present the freight at the warehouse.

Q. Do you know as a fact whether the Southern Pacific Railroad Company, between the points named, holds itself all of the time in readiness to transport the freight of the Government, such as munitions of war, soldiers, et cetera?

(Same objection.)

A. It does; through its relations with the Southern Pacific.

Q. Does it do this through its lease with the Southern Pacific Company at present?

(Same objection.)

A. Yes, sir.

Q. Will you state in what manner accounts are made up between the Government of the United States on the one side and the Southern Pacific Railroad Company, through its lessee, the Southern Pacific Company, on the other, for Government transportation?

(Same objection.)

A. Accompanying the various shipments of Government freight, is a bill of lading, which is an acknowledgment by the railroad company that they have received the freight from the shippers, usually the quartermaster, for transportation to the various points to which it is destined. This bill of lading accompanies the freight through to its destination, and is there signed, what is called accomplished, by the consignee, acknowledging that he has received this freight, that the transportation has been performed; these documents are then returned to my office, and I make up an account against the Government in the name of the Southern Pacific Company for the transportation, and present these bills of lading as the evidence of the transportation having been performed.

Q. How are the accounts for such transportation settled, as between the Southern Pacific Company and the Government, and afterwards between the Southern Pacific Company and the Southern Pacific Railroad Company?

(Same objection.)

A. The account is made in the name of the Southern Pacific Company, and presented to the accounting officers of the Government, and is settled the same as any other account would be.

Q. Are the same prices for transportation received by the Southern Pacific Company, as lessee of the Southern Pacific Railroad Company for transportation of soldiers and governmental effects between the points named, over the Southern Pacific Railroad Company, as are received for a like service performed for individuals?

(Same objection.)

A. Our accounts are all based on those same rates, yes, sir.

Q. Is it not a fact that in the appropriations by Congress a less rate is allowed for governmental transportation for this particular road?

(Same objection.)

A. I know what you mean, but it is hardly in that shape; that only applies to the army appropriation act; there is in the army appropriation act a clause which says that disbursements of money from that fund shall be not to exceed 50 per cent of the regular charges; the charge is extended at the same rate, but a portion of that charge is disallowed.

Q. Do you know why that is the case?

(Same objection.)

A. That is one of the conditions in the appropriation act.

Q. Then I understand that the rate made up and charged to the Government is the same rate, so far as

your office is concerned, as would be charged to individuals?

(Same objection.)

A. Certainly.

Q. Do you know how much is allowed by the Government for the Southern Pacific Railroad Company, through its lessee, the Southern Pacific Company, and between the points named of that rate?

(Same objection.)

A. Fifty per cent of that charge.

Q. Can you produce any settled account between the Government and the Southern Pacific Company, as lessee of the Southern Pacific Railroad Company, for transportation recently performed between the points named?

(Same objection.)

A. I can show you an account for service performed in the months of September, October and November, 1889, which has been settled, and I can refer you to the date of the settlement, and the warrant which was drawn in settlement. (Producing.)

Q. Is this the original?

(Same objection.)

A. Yes, sir.

Q. I understand you now produce an original statement of account for transportation between the United States and the Southern Pacific Company, Pacific System, No. 5,487, on account of the war department, for the months of September, October and November, 1889, for freight, in the sum of $4,089.53, covering transportation,

which includes the points named, Tehachapi, by way of Los Angeles, to Fort Yuma.

(Same objection.)

A. Yes, sir.

Mr. REDDING.—We offer this in evidence as defendants' exhibit before the special examiner No. 120, and ask that under the stipulation a copy be made of the same and certified by the special examiner, which copy, when so made and certified, shall stand in lieu of the original.

Mr. CALL.—I have no objection to the special examiner making a copy and certifying to the same.

I will object to the introduction of the paper in evidence on the ground that it is incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the act of Congress of March 3, 1871, by the terms and conditions of said act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation, in evidence herein, marked

Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States, in each case of consolidation, all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, trustees, shows upon its fact that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the interior department, and of the United States land office at Los Angeles, and the United States land office at San Francisco, and the records of the office of the secretary of state for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and the further objection that the Southern Pacific Company, mentioned in the account, and referred to by the witness is a different corporation from the Southern Pacific Railroad Company, and that the Southern Pacific Company is not a party to this suit.

Mr. REDDING.—Q. Is this exhibit we have offered the original from which an exact copy was made and forwarded to the war department?

(Same objection.)

A. Yes, sir.

Q. They were compared under your own supervision?

(Same objection.)

A. Yes, sir.

Q. . this a form similar to those used for other accounts of like nature with the Government?

(Same objection.)

A. Yes, sir.

Q. For how many years has the Southern Pacific Railroad Company performed transportation for the Government between the points named and under similar procedure as herein testified to?

(Same objection.)

A. Ever since the road has been in operation.

Q. Do you know as a fact whether the line of the Southern Pacific Railroad Company from Mojave, by way of Los Angeles, to Fort Yuma has always been maintained as a first-class railroad for governmental transportation?

(Same objection.)

A. So far as I am able to know, not being an expert.

Q. Don't you know as a fact that the road has been used all the time for that purpose?

(Same objection.)

A. Yes, sir.

Q. Have not accounts been audited for freight transported for the Government during these years?

(Same objection.)

A. Yes, sir.

Q. Prior to the 50 per cent rate, of the charge being allowed, what was the percentage allowed?

(Same objection.)

A. The full payment.

Mr. CALL.—Q. When was it changed to 50 per cent?

A. This last Congress; the previous Congress it was 60.

Q. What was it before that? A. Full payment.

Mr. REDDING.—What is your method of crediting to the Southern Pacific Railroad Company its proportion of these governmental transportation charges?

(Same objection.)

A. They are included in our regular earning statements, and apportioned the same as all the other traffic is apportioned over that part of the line.

Q. Do you know as a fact whether the Southern Pacific Railroad Company gets its due credit for the governmental transportation between the points?

(Same objection.)

A. Yes, sir.

Q. It does?

(Same objection.)

A. Yes, sir.

Q. Has the Government of the United States recognized the line of the Southern Pacific Railroad Company between the points named as one of its means of governmental transportation during all these years?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the act of Congress of March 3, 1871, by the terms and conditions of said act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in is-

sue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation, in evidence herein, marked "Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner Nos. 88 and 89," has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation, all right to earn such lands by *by* constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mlils, trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the interior department, and of the United States land office at Los Angeles, and the United States land office at San Francisco, and the records of the office of the secretary of state of California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and the further objection that the Southern Pacific Company mentioned in the account and referred to by the witness as a different corporation from the Southern Pacific Railroad Company, and that the Southern Pacific Company is not a party to this suit; and the further objection that the testimony sought calls for a conclusion of law on the part

of the witness, and the matter has been fully shown by the previous evidence.)

A. Yes, sir.

Q. Have you with you any of the original orders or demands from the Government for governmental transportation over the line of the Southern Pacific Railroad Company?

(Same objection.)

A. Yes, sir (producing).

Mr. REDDING.—Defendants offer in evidence transportation order made by the Government of the United States upon the Southern Pacific Company, wherein the demand is made by the Government that the Southern Pacific Company transport Private F. Armstead and —— pounds of extra baggage, of Company C, Tenth Regiment Infantry, from San Francisco, California, to Los Angeles, California, by the way of the Southern Pacific Railroad Company, signed by R. N. Batchelder, quartermaster general, United States army, duly countersigned; and ask that it be marked Defendants' Exhibit before the Special Examiner No. 121, and that a copy made by the special examiner be certified, and when so certified stand in lieu of the original.

Mr. CALL.—Objected to as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the act of March 3, 1871, by the terms and conditions of said act, and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before

the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States, in each case of consolidation, all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the interior department, and of the United States land office at Los Angeles, and the United States land office at San Francisco, and the records of the office of the secretary of state for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.

(Transportation order made by the Government of the United States upon the Southern Pacific Company to transport F. Armsted, is marked Defendants Exhibit before the Special Examiner No. 121, Stephen Potter, spe-

cial examiner, and a certified copy thereof is attached hereto.)

Mr. REDDING.—Defendants next offer in evidence similar order for transportation upon the Southern Pacific Railroad Company, dated June 30, 1893, and signed by R. N. Batchelder, quartermaster general of the United States army, and duly countersigned, calling upon the Scuthern Pacific Railroad Company to transport Sergeant Charles H. Trask, of Troop G, and two privates, Ccmpany C, First Regiment Cavalry, en route from Alcatraz Island, California, to Wilcox, Arizona, and ask that it be marked Defendants' Exhibit before the Special Examiner No. 122, and when a copy is certified by the special examiner, that the copy may stand in lieu of the original.

(Same objection.)

(Order for transportation upon the Southern Pacific Railroad Company, dated June 30, 1893, to transport Sergeant Charles H. Trask, is marked "Defendants' Exhibit before the Special Examiner, No. 122, Stephen Potter, special examiner," and a certified copy thereof is attached hereto.)

Mr. REDDING.—Q. Are these two demands or requests for transportation by the Government recently made for transportation upon the Southern Pacific Railroad Company and the Southern Pacific Company?

(Same objection.)

A. Yes, sir.

Q. Was the transportation performed by the Southern Pacific Company, as lessee of the Southern Pacific Railroad Company, and by the Southern Pacific Railroad

Company, in conformity with such demand or request by the Government?

(Same objection.)

A. Yes, sir.

Q. Is that the common form of demand made by the Government for transportation over the line of the Southern Pacific Railroad Company between the points named?

(Same objection.)

A. Yes, sir.

Q. Is it honored by that company in each instance?

(Same objection.)

A. Yes, sir.

Cross-Examination.

Mr. CALL.—What proportion of the full amount of the fare was paid upon that transportation request last referred to?

A. It has not been paid yet. It has never been settled.

Q. Has either one of them been settled?

A. No, sir.

Q. What is the deduction which you say is usually made for a land grant road? A. Fifty per cent.

Q. What was it in 1891? A. Sixty per cent.

Q. What was it in 1890? A. Full payment.

Q. What was it prior to that time?

A. I believe there was a deficiency appropriation that had the same condition of 60 per cent in it, which covered the deficiency of 1890, but the general appropriation was full payment prior to 1891.

Q. Did that cover transportation of troops, munitions of war, public stores and other Government property?

A. Do you mean full payment?

Q. Yes, sir. A. Yes, sir.

Q. How long has the railroad been operated by the Southern Pacific Company of Kentucky

A. Since 1885.

Q. What deductions were made for land grant roads in paying for transportation of mails prior to 1890?

Mr. REDDING.—We object to the question as not proper cross-examination; I have not asked Mr. Wilder anything in reference to postal service, and I doubt if the witness' testimony would be competent, as not being the best evidence.

A. Twenty per cent reduction.

Mr. CALL.—Q. How long did that deduction continue previous to 1890?

A. I think it was in the law of 1876.

Q. It was all fixed by law? A. Yes, sir.

Q. Are you an officer of the Southern Pacific Company of Kentucky, or of the Southern Pacific Railroad Company? A. Southern Pacific Company.

Q. How are the accounts adjusted between the Southern Pacific Company and the Southern Pacific Railroad Company?

A. The accounts are all kept in the name of the Southern Pacific Company, and then monthly we make a distribution of the earnings for the different roads over which service is performed, including the Southern Pacific Railroad Company.

Q. And then there is paid by the Southern Pacific Company of Kentucky the amount called for under the lease?

A. Yes, sir.

Q. Has the Government ever made a deduction for transportation of troops and munitions of war and public stores where the service was performed by the Southern Pacific Company of Kentucky, and accounts made by that company to the Government? A. No, sir.

(This answer was subsequently corrected. See foot note on page 680, at the end of Mr. Wilder's testimony. —S.P.)

Q. Has the Government ever made deduction for transporting of mails where the service was performed by the Southern Pacific Company of Kentucky?

A. The same deduction as if it had been performed by the Southern Pacific Railroad Corporation.

Q. Then a deduction was in fact made where the service was performed by the Southern Pacific Company of Kentucky?

A. Just the same as if it had been performed by the Southern Pacific Railroad Company.

Q. When was the present contract made for carrying mails from Goshen to Yuma by the Southern Pacific Company of Kentucky?

A. The present arrangement, which is hardly in the nature of a contract, went into effect July 1, 1890; we made no contract, so far as having any written agreement; we were obliged to carry the mails; I believe the act compels that, and the compensation is determined by

law, based on the weight of the mails carried, which is determined by weighing once in four years.

Q. What is paid to the Southern Pacific Company for carrying mails from Goshen to Yuma?

A. I cannot tell the figures.

Q. What is the mode of keeping the account with the Government—do you make out an account monthly or otherwise, in reference to the transportation of mails?

A. We make no account; the sum paid is a fixed sum, and the postoffice department draw their warrants for the amount quarterly.

Q. And send it?

A. Send it? yes, sir. Of course, we enter up the amounts on our books.

Q. Do you mean to say then that the amount paid now is only one-half the amount paid to other roads for similar services?

A. Not for mails.

Q. How is it for mails?

A. The amount paid for mail transportation is the same to any other land grant road for mail transportation, that is 80 per cent of the regular rates.

Redirect Examination.

Mr. REDDING.—Q. Where is Wilcox?

(Same objection.)

A. In Arizona.

Q. How far from San Francisco?

(Same objection.)

A. Say in the neighborhaad of one thousand miles.

Q. The lines of what companies leased by the Southern Pacific Company are used in the transportation of soldiers and other governmental effects, not postal, between San Francisco and Wilcox?

(Same objection.)

A. The Central Pacific between San Francisco and West Oakland; the Northern Railway between West Oakland and Martinez; the Southern Pacific Railroad Company between Martinez and Tracy; the Central Pacific Railroad Company between Tracy and Goshen; the Southern Pacific Railroad Company between Goshen and Yuma; the Southern Pacific Railroad Company of Arizona from Yuma east to Wilcox.

Q. Then if a Government transportation was made by the Southern Pacific Company from San Francisco to Wilcox, recently, will you please state how the amounts to be paid by the Government would be adjusted over the several lines of leased railroads used?

(Same objection.)

A. The settlement would be made with the Southern Pacific Company for the entire distance, the payment due the land grant portion of the line being reduced according to the law.

Q. What portion of the distance named is the land grant portion of the line?

(Same objection.)

A. I have not the miles in my mind.

Q. Would it include that portion of the line from Mojave by the way of Los Angeles to Fort Yuma?

(Same objection.)

A. Yes, sir.

Q. Will you state whether the Southern Pacific Company would receive from the Government the same rate for the transportation of soldiers between Mojave, by the way of Los Angeles, and Fort Yuma, and between Goshen and Yuma, and between Tracy and Yuma, as it would receive from San Francisco to Tracy?

(Same objection.)

A. The rate used is a through rate, covering the entire distance from San Francisco to Wilcox.

Q. How would that be apportioned afterwards?

(Same objection.)

A. On the basis of the mileage of land grant and non-land grant roads.

Q. Then there would be a difference between the land grant portion of the road and the non-land grant portion of the road?

(Same objection.)

A. In the final settlement there would be a deduction from the land grant portion.

On page 676, line 14, I desire to withdraw my answer, "No, sir," and substitute the following answer in lieu thereof: The same deductions have been made as would have been made if settlements had been made with the individual corporations over whose roads the service was performed.

C. J. WILDER.

MAP(S) IS/ARE TOO LARGE TO BE FILMED

Defendants' Exhibit No. 121.—Request for Transportation.

(Before the Special Examiner.)

L. No. 77313.

Not transferable and good only for two days from date.

Quartermaster's Department U. S. Army. Request for transportation. Not valid until countersigned by the issuing officer.

San Francisco, July 7, 1893.

The Southern Pacific Company, via Martinez and Tracy, will please transport Private J. Armstead, ——— ——pounds extra baggage. Company C, 10th Regiment Infantry, from San Francisco, California to Los Angeles, California, via Southern Pacific Company and Southern California Railway Company en route from San Francisco, California to San Diego, Bks., California, on continuous journey.

R. N. BATCHELDER,
Quartermaster General
U. S. Army.

Signature of issuing officer: J. G.C. Lee, Deputy Quartermaster General U. S. A.

Remarks: Settlement for the services to be made according to law by the accounting officer of the treasury. 1st class limited.

The holder of this request or the officer in charge of troops is required to fill the receipt below before signing, stating the exact number of men transported and the places from and to which transportation has been furnished. The receipt should be filled up in ink if practicable, and if the person receipting cannot write his name,

there should be a witness to his mark. Names and places should be written in full, and if the transportation is furnished by other than passenger train, or passenger car, the fact should be stated.

San Francisco, Cal., July 7, 1893.

I certify on honor, that the Southern Pacific Company, via Martinez and Tracy, has furnished transportation for myself ———— pounds extra baggage, from San Francisco, California, to Los Angeles, California, in compliance with the above request.

Sign here—James Armstead.

(Printed on the other side): Settlement to be made on the basis of the division among the railroads interested of the through rate between ultimate terminal points.

(On the back) San Francisco, July 7, 1893.

I certify that this request is issued upon the authority of Order No. 18, San Francisco Sub. Depot Recruiting Service, C. S. and on account of joining company from enlistment.

(Signed) J. G. C. LEE,
Deputy Quartermaster General,
U. S. Army.

The account for the transportation on this request, should be presented to ————, Quartermaster U. S. A., at ————, for settlement.

Paid, Voucher No. —— Abstract B.

For ————, 18——.

By ————,
Quartermaster U. S. A.

(Stamped): July 10, 1893. 3199. (Stamped): South-

ern Pacific Company, M. July 7, 1893. City Office. San Francisco.

(Stamped): Treasurer's Office, July 10, 1893, Southern Pacific Company.

(Stamped): General Auditor's Office, Southern Pacific Company, July 10, 1893. San Francisco.

(Marked) Defendants' Exhibit before the Special Examiner No. 121. Stephen Potter, special examiner.

I do hereby certify that I have compared the foregoing document with the original, and find it to be a full, true, and correct copy thereof.

San Francisco, October 10, 1893.

STEPHEN POTTER,
Special Examiner.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 122.—Request for Transportation.

(Before the Special Examiner.)

L. No. 91910.

Not transferable and good only for 12 days from date.

June 30th, 1893.

Quartermaster's Department U. S. Army, Request for transportation.

Not valid until countersigned by the issuing officer.

The Southern Pacific Railroad Company will please transport Sgt. Chas. H. Trask, Troop "G" and (2) two privates ————————Co. "C" 1st Regiment Cavalry from San Francisco, California, to Wilcox, Arizona Territory,

Via————————, en route from Alcatraz Island California, to Fort Grant Arizona Territory, on continuous journey. R. N. Batchelder, Quartermaster General U. S. Army.

Signature of issuing officer: J. B. Aleshire, A. 1st. Lt. and R. Q. M. 1st Cav. a Quartermaster U. S. A.

Remarks: Settlements will be made on the basis of the division, among the roads interested of the through rate between the ultimate terminal points.

The holder of this request or the officer in charge of troops is required to fill the receipt below before signing, stating the exact number of men transported, and the places from and to which transportation has been furnished. The receipt should be filled up in ink if practicable, and if the person receipting cannot write his name, there should be a witness to his mark. Names and places should be written in full, and if the transportation is furnished by other than passenger train or passenger car, the fact should be stated.

San Francisco, July 4, 1893.

I certify, on honor, that the Southern Pacific Company has furnished transportation for myself and one man ————————pounds extra baggage, from San Francisco to Wilcox, Arizona, in compliance with the above request.

Sign here Charles H. Trask.

(On the back.)

Fort Grant, A. T., June 30, 1893.

I certify that this request is issued upon the authority of Sar. IV Post Order No. 92, dated June 29, 1893, issued in compliance with Sar. IV, S. O. No. 103 C. S. Headquarters department of Arizona, and on account of guard

returning to proper station, after escorting military convict to Alcatraz Island California.

J. B. ALESHIRE,

1st Lt. and R. Q. M. 1st. Cav. A A Q. M. U. S. Army.

The account for the transportation furnished on this request should be presented to ——————Quartermaster U. S. A. at —————— for settlement.

Paid Voucher No.—— Abstract B. for —————— By ——————, Quartermaster U. S. A.

(Stamped): July 6, 1893, 3196.

(Stamped): Treasurer's Office July 6, 1893, S. P. Co.

(Stamped) General Auditor's Office, Southern Pacific Company, July 6, 1893, San Francisco.

(Marked) Defendants' Exhibit before the Special Examiner No. 122. Stephen Potter, special examiner.

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true, and correct copy thereof.

San Francisco, October 10, 1893.

STEPHEN POTTER,
Special Examiner.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 132.—Letter.

(Before the Special Examiner.)

D.

F. **(4-207.)** **W. J. M.**

C. S. B.

Department of the Interior,
General Land Office,
Washington, D. C., Sept. 29, 1893.

I, Edwd. A. Bowers, acting commissioner of the general land office, do hereby certify that the annexed copy of the letter of acting secretary B. R. Cowen, dated May 11, 1874, and copy of the enclosure transmitted therewith, the true and literal exemplifications of the originals now on file in this office, together with all the endorsements thereon.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

EDWD. A. BOWERS,
Acting Commissioner of the General Land Office.

[Seal]

Z. B. S.

Lands and Railroad.
Department of the Interior,
Washington, D. C., 11th May, 1874.

Sir.

I transmit herewith, for appropriate action, a map of 50 miles of the Southern Pacific Railroad, showing the line of that road from a point in the northwest one-quarter, section 3, township 2 north, range 15 west, San

Bernardino base and meridian, running thence in a southeasterly direction to the city of Los Angeles, and thence in an easterly direction, to the termination of the 50th mile therefrom, at a point in the northeast one-quarter, section 27, township 1 south, range 9 west, same base and meridian.

I also send you a copy of Dept.—— letter of the eighth instant, to the president of the United States, recommending the acceptance of this portion of road, and of his endorsement thereon, of the ninth instant accepting it.

Very respectfully,
Your obt. servant,
B. R. COWEN,
Acting secretary.

To Hon. W. W. Curtis, Acting Commissioner, G. L. O.

Copy.

Department of the Interior.
Washington, D. C., 8th May, 1874.

Sir: I have the honor to submit herewith for your action the report, dated 15th ultimo, of Messrs. Foulke, Brown & Sullivan, appointed by you to examine and report upon the Southern Pacific Railroad and Telegraph Line. They have examined the 50 miles of road, etc., commencing at a point in the northwest one-quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, running thence in a southeasterly direction to the city of Los Angeles and thence in an easterly direction, ending at the termination of the 50th mile therefrom, at a point in the northeast one-quarter, sec-

tion 27, township 1 south, range 9 west, same base and meridian.

The commissioners in their report represent (with exception of a few defects which the company promise to remedy hereafter) that this portion of road is completed and equipped as a first-class railroad; and that the telegraph line is finished for the same distance; and is first-class. I therefore respectfully recommend the acceptance of the same, and the issue to said company of patents for lands due on account of the construction thereof, agreeably to the provisions of the "act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved 27 July, 1866, and the acts amendatory thereof, approved 25 July, 1868, and 28th June, 1870.

Very respectfully, your ob't servant,

B. R. COWEN,
Acting secretary.

To the President.

I

[Endorsed]: Department of the Interior, 8th May, 1874. B. R. Cowen, acting secretary, submits to the President report of Commissioners on first section of fifty miles of Southern Pacific Railroad.

Executive Mansion, May 9th, 1874: The within recommendations are approved. U. S. Grant.

[Endorsed]: Defendants' exhibit before the Special Examiner No. 132. Stephen Potter, special examiner.

Filed Dec. 5, 1893. Wm. M. Van Dyke, clerk.

Defendants' Exhibit No. 133.—Letter.

(Before the Special Examiner.)

F. (4-207.) W. J. M.

C. S. B.

Department of the Interior.

General Land Office.

Washington, D. C., Sept. 29, 1893.

I, Edw. A. Bowers, acting commissioner of the general land office, do hereby certify that the annexed copy of a letter of the secretary of the interior, dated November 13, 1875, and a copy of the enclosure transmitted therewith, are true and literal exemplifications of the originals now on file in this office, together with all the endorsements thereon.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal.] EDWD. A. BOWERS,

Acting commissioner of the general land office.

Land
& RR.
Z. B. S.

Department of the Interior.

Washington, D. C., 13th Nov., 1875.

Sir:

I transmit herewith, for appropriate action, a map of fifty miles of the railroad constructed by the Southern Pacific Railroad Company of California under the act of 3d March, 1871, which authorized said company to build

a line "from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River." The section delineated on the map begins at a point in the northeast quarter section 27, township 1 south, range 9 west, San Bernardino base and meridian, and ends in a point in the southwest one-quarter section 4, township 3 south, range 1 west, same base and meridian.

I also transmit herewith copy of a letter addressed by me on the eighth instant, to the President, recommending the acceptance of said section, and of his endorsement thereon approving the recommendation.

I am, Sir,
Very respectfully,
Your obt. servant,
Z. CHANDLER,
Secretary.

Hon. S. S. Burdett,
Commr. gen. land office.

Copy.

Department of the Interior.
Washington, D. C., 8th Nov., 1875.

Sir:

I have the honor to submit herewith for your consideration and, if deemed proper, for your approval, the report under date of the twenty-first ult. of Messrs. Foulke, Brown and Sullivan, commissioners appointed by you to examine the Southern Pacific R. R. and telegraph line of California. They have examined an additional section of fifty miles of the (branch) road and telegraph line authorized by the 23d section of the act of 3d March, 1871,

(known as the Texas Pacific Railway act), to be constructed by the said Southern Pacific Railroad Company. This portion of road commences at the termination of section 1 of said branch, at a point in the northeast one-quarter of section 27, township 1 south, range 9 west, San Bernardino base and meridian, and runs thence fifty miles to a point in the southwest one-quarter of section 4, township 3 south, range 1 west, same base and meridian.

The commissioners report this section completed and equipped as a first-class railroad, and the telegraph as also completed and first-class.

I therefore respectfully recommend the acceptance of said second section of fifty miles of branch road and the issuance to the company constructing it of patents for lands due on account of such construction, agreeably to the provisions of law.

Very respectfully,

Z. CHANDLER,

Secretary.

The President.

[Endorsed]: Department of the Interior, 8th Nov., 1875. Z. Chandler, secretary, submits to the President report of commissioners on second section of branch line, of Southern Pacific Railroad of California.

Executive Mansion, Nov. 11, 1875: The within recommendations are approved. U. S. Grant.

[Endorsed]: Defendants' Exhibit before the special examiner No. 133. Stephen Potter, special examiner.

Filed Dec. 5, 1893. Wm. M. Van Dyke, clerk.

Defendants' Exhibit No. 134.—Letter.

(Before the Special Examiner.)

F. (4-207.) W. J. M.

C. S. B.

Department of the Interior.

General Land Office.

Washington, D. C., Sept. 29, 1893.

I, Edwd. A. Bowers, acting commissioner of the general land office, do hereby certify that the annexed copy of a letter from the secretary of the interior, dated July 22d, 1876, and a copy of the enclosure transmitted therewith are true and literal exemplifications of the originals now on file in this office, together with all the endorsements thereon.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal.] EDWD. A. BOWERS,

Acting commissioner of the general land office.

Z. B. S.

Department of the Interior.

Washington, D. C., 22d July, 1876.

Sir:

I transmit herewith a map and profile of the third section (fifty miles) of the branch line of the Southern Pacific Railroad of California; also copy of letter addressed by me to the President, on the tenth instant, submitting the report of the commissioners who ex-

amined said section, with copy of his endorsement thereon, the twenty-first instant.

I am, sir, very respectfully,

Your obt. servant,

Z. CHANDLER,

Secretary.

Hon. J. A. Williamson,
Comr. gen. land office.

Copy.

Department of the Interior.

Washington, D. C., 10 July, 1876.

Sir:

I have the honor to submit herewith for your examination and if deemed proper for your approval, the report, under date of the twenty-second ultimo, of Messrs. L. M. Foulke, Calvin Brown and Eugene L. Sullivan, commissioners appointed by you to examine the Southern Pacific Railroad and telegraph line of California. They have examined the third section of fifty miles of the branch road and telegraph line authorized by the twenty-third section of the act of 3d March, 1871 (known as the Texas Pacific Railway act), to be constructed by the Southern Pacific Railroad Company. This portion of road begins at the termination of section No. 2 of said railroad at a point in the southwest one-half of section 4, township 3 south, range 1 west, San Bernardino base and meridian, and running thence in a southeasterly direction fifty miles to a point in the southwest one-quarter of section 24, township 5 south, range 7 east, same base and meridian.

The commissioners report this section completed and equipped as a first-class railroad, and the telegraph as also completed and first-class. I therefore respectfully recommend the acceptance of said third section of fifty miles of branch road, and the issuance to the company constructing it of patents for lands due on account of such construction, agreeably to the provisions of law.

I am, sir, very respectfully, your obt. servant,

Z. CHANDLER,
Secretary.

The President.

[Endorsed]: Department of the Interior, 10th July, 1876. Z. Chandler, secretary, submits to the President report of commissioners on third section of fifty miles, branch line of Southern Pacific Railroad of California.

Executive Mansion, July 21, 1876: The within recommendations are approved. U. S. Grant.

[Endorsed:] Defendants' exhibit before the special examiner No. 134. Stephen Potter, special examiner.

Filed Dec. 5, 1893. Wm. M. Van Dyke, clerk.

Defendants' Exhibit No. 135.—Letter.

(Before the Special Examiner.)

F. (4-207.) W. J. M.
C. S. B.

Department of the Interior.
General Land Office.

Washington, D. C., Sept. 29, 1893.

I, Edwd. A. Bowers, acting commissioner of the general land office, do hereby certify that the annexed copy

of a letter of acting secretary of the interior dated March 3, 1877, and a copy of the enclosure transmitted therewith are true and literal exemplifications of the originals now on file in this office, together with all the endorsements thereon.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[Seal.] EDWD. A. BOWERS,
Acting commissioner of the general land office.

Z. B. S.

Department of the Interior.

Office of the Secretary.

Washington, D. C., 3d March, 1877.

Sir:

I transmit herewith, for appropriate action, copy of letter addressed by the department to the President on the first instant, recommending his acceptance of the fourth section (branch line) 78 59-100 miles, of the Southern Pacific Railroad of California, and copy of his endorsement thereon yesterday, approving the recommendation. The map accompanying the report of the commissioners will also be found herein.

I am, sir,
Very respectfully,
Your obt. servant,
CHAS. T. GORHAM,
Acting Secretary.

Hon. J. A. Williamson,
Comr. gen. land office.

Copy.

Department of the Interior.

Washington, D. C., 1st March, 1877.

Sir:

I have the honor to submit herewith for your consideration and if deemed proper for your approval, the report, under date of the seventeenth ultimo, of Messrs. L. M. Foulke, Calvin Brown and Eugene L. Sullivan, commissioners appointed by you to examine the Southern Pacific Railroad and telegraph line of California. They have examined the fourth section, 78.59 miles of the road, which said company are authorized by the twenty-third section of the act of 3d March, 1871 (16 Stat., 579), to build. Said section begins at a point in the northwest one-quarter of section 3, township 2 north, range 15 west, San Bernardino base and meridian, runs northerly, and ends at a point in the northeast one-quarter section 17, township 11 north, range 12 west, same base and meridian. They report said section as completed and equipped as a first-class railroad, and the telegraph line also as completed and first-class. I therefore respectfully recommend the acceptance of said fourth section, and the issuance to the company constructing it of patents for lands due on account of said construction, agreeably to the provisions of law.

I am, sir, very respectfully, your obedient servant,

CHARLES T. GORHAM,

Acting Secretary.

The President.

[Endorsed]: Department of the Interior, 1st March, 1877. Charles T. Gorham, acting secretary, submits to

the President report of commissioners on fourth section (branch line), 78.59 miles, of Southern Pacific Railroad of California.

Executive Mansion, March 2, 1877: The within recommendations are approved. U. S. Grant.

[Endorsed]: Defendants' exhibit before the special examiner No. 135. Stephen Potter, special examiner.

Filed Dec. 5, 1893. Wm. M. Van Dyke, clerk.

Defendants' Exhibit No. 136.—Letter.

(Before the Special Examiner.)

F. (4-207.) W. J. M.

C. S. B.

Department of the Interior.

General Land Office.

Washington, D. C., Sept. 29, 1893.

I, Edwd. A. Bowers, acting commissioner of the general land office, do hereby certify that the annexed copy of a letter from the secretary of the interior, C. Schurz, dated January 30, 1878, and a copy of the enclosure transmitted, are true and literal exemplifications of the originals now on file in this office, together with all the endorsements thereon.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal.] EDWD. A. BOWERS,

Acting commissioner of the general land office.

Z. B. S.

Department of the Interior.

Office of the Secretary.

Washington, D. C., 30th January, 1878.

Hon. J. A. Williamson, Commr. Gen. Land Office.

Sir: I transmit herewith, for your information and appropriate action, copy of my letter of the nineteenth instant to the President, recommending the acceptance of a portion of the fifth section of the Southern Pacific Railroad of California, and of his endorsement thereon of the twenty-third instant; also the map which accompanied the report of the commissioners who examined said section.

I am, sir,

Very respectfully,

Your obt. servant,

C. SCHURZ,

Secretary.

Copy.

Department of the Interior.

Office of the Secretary.

Washington, D. C., 19th January, 1878.

Sir:

I have the honor to submit herewith for your consideration the report, under date of the sixth ultimo of Messrs. Eugene L. Sullivan, Andrew S. Bender and Zebulon B. Sturgus, commissioners appointed by you to examine the Southern Pacific Railroad and telegraph line of California.

They have examined the fifth section of which is known as the branch line of said road, authorized by the twenty-third section of the act of 3d March, 1871, incorporating the Texas Pacific Railroad Company (16 Stat., 579). Said section is 118 37-100 miles in length. It begins at a point in the southwest one-quarter of section 24, township 5 south, range 7 east, San Bernardino base and meridian; runs southeastward and ends in the center of the Colorado river at a point which, if the United States surveys were extended into said river, would be in the southeast one-half of section 28, township 16 south, range 22 east, same base and meridian.

The commissioners report said section as completed and equipped as a first-class railroad, and the telegraph line also as completed and first-class.

Said twenty-third section of the act of 1871 authorizes the Southern Pacific Railroad Company of California to construct its road "to the Texas Pacific Railroad at or near the Colorado river." The Texas Pacific Railroad not having been constructed at or near said river, the point of contact of said roads has not been ascertained, except as to the fact that it is within the Fort Yuma military reservation.

In view of your action last autumn in relation to said Southern Pacific Railroad's crossing said reservation, I have the honor to recommend that said section examined and reported on be accepted from the point of beginning to the point where the road intersects the western boundary of said reservation, which is represented on the map accompanying said report as a point in the southeast one-quarter of northeast one-quarter section 27, township 16

south, range 22 east, San Bernardino base and meridian, and that patents for lands due on account of construction, according to provisions of law, issue to said Southern Pacific Railroad Company of California.

I am, sir, very respectfully, your obt. servant,

C. SCHURZ,
Secretary.

The President.

[Endorsed]: The secretary of the interior, 19th January, 1878, submits report of commissioners on the fifth section; 118.37 miles of Southern Pacific Railroad, authorized by act of 3d March, 1871, and recommends that the road examined be accepted from the beginning of said section to the point where it crosses the western boundary of Fort Yuma military reservation, California.

Executive Mansion, January 23d, 1878. The recommendations of the secretary of the interior are hereby approved. The section of railroad is accepted between the points designated by him, and lands will be patented to the company accordingly. R. B. Hayes.

[Endorsed]: Defendants' exhibit before the special examiner No. 136. Stephen Potter, special examiner.

Filed Dec. 5, 1893. Wm. M. Van Dyke, clerk.

Defendants' Exhibit No. 137.—Letter.

(Before the Special Examiner.)

M C. P. A. M.

Department of the Interior.

Washington, October 4, 1893.

D. A. Chambers, Esq., City.

Sir: I have at hand your letter of yesterday asking to be advised of the dates of receipt and filing in the department of the reports of the commissioners, and accompanying maps and profiles, on the completed sections of the Southern Pacific Railroad of California, branch line.

In answer I have to state that the report, with accompanying map and profile, of the first section, with letter of May 4, 1874, from C. P. Huntington was received and filed May 7, 1874; that of the second section from same person with letter of November 5, 1875, was received and filed November 6, 1875; that of the third section from same person with an undated letter was received and filed July 10, 1876; that of the fourth section from same person with letter of February 27, 1877, was received and filed February 28, 1877, and that of the fifth section from same person with letter of December 26, 1877, was received and filed December 28, 1877.

Very respectfully,

WM. H. SIMS,
Acting Secretary.

11282—'93.

[Endorsed]: Defendants' exhibit before the special examiner No. 137. Stephen Potter, special examiner.

Filed Dec. 5, 1893. Wm. M. Van Dyke, clerk.

Defendant's Exhibit No. 106.

Certificate.

M. C. P. A. M.

J. T. S.

P. M. S.

United States of America.

Department of the Interior.

Washington, D. C., ov. 8, 1893.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original on file in this department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the department of the interior to be affixed, the day and year first above written.

[Seal.] WM. H. SIMS,

Acting secretary of the interior.

J. D.

LETTER.

President's Office.

Boston, April 8, 1872.

Hon. Columbus Delano,

Secretary of the Interior,

Washington, D. C.

Sir: I respectfully ask on behalf of the Atlantic & Pacific Railroad Company the opinion of your department upon the proper construction to be given to the eighth and ninth sections of the act of July 27th, 1866, in respect to the condition imposed upon said company to build fifty miles of road per year.

The construction which we place upon these sections

is, that by the eighth section the company was required to commence the work as early as the 27th day of July, 1868, two years after the approval of the act, that during the first and second years thereafter, that is, from July 27th, 1868, to July 27th, 1870, no specific amount of road was required to be built, but on the third year thereafter, that is "after the second year" (from the time limited for the commencement of the work) or after July 27, 1870, the company was required to complete fifty miles per year; that by the terms of the ninth section this limitation is practically enlarged by the period of one year, for the reason that no consequences can attach to a failure to perform according to the provisions of the preceding section until the lapse of this period after a default.

Under this construction, should the third division of fifty miles be completed upon the 27th day of July, 1874, the company would not by the delay have lost any of the rights conferred by the charter.

Owing to the fact that the portion of the Indian Territory lying west of the present terminus of the road was not, and under the present conditions cannot have any wants to be supplied by a railroad, or any business to offer as an inducement for its immediate construction, it may be deemed by the company advisable to delay the construction of this section of road as long as the terms of the act will permit.

We, therefore, ask the decision of the department in advance for the government of the action of the company upon the point above stated.

It is also, our opinion that the requirement to build fifty miles per year does not compel the company to build this

precise amount within each period of twelve months, but only to build at the rate of fifty miles per year, so that it is complied with by constructing with sufficient rapidity to secure at the expiration of any year the completion of the entire amount of road which by the terms of the act is required to be then completed, although the result should be reached by applying an excess built in one year, or at a time sooner than required by the act, to make up the deficiency of a subsequent year.

Upon this point also we request the opinion of the department.

Very respectfully, your obedient servant,

FRANCIS B. HAYES,
President.

(Atlantic & Pac.) Department of the Interior. Received: 10 Apl., 1782; dated: 8 Apl., 1872. From Francis B. Hayes, Prest., Boston, Mass. Subject: Wishes the Department to give a construction to the eighth and ninth sections of act of 27 July, 1866, relative to conditions imposed upon the company as to building 50 miles of road per year. Action: 10 Apl., 1872. Respectfuly referred to: Refd. to Assistant Attorney General Smith for his opinion. See letter of 10 Apl., '72, to Mr. Hayes. Chief Clerk. Registered one—.

[Endorsed]: United States Circuit Court, Southern District California. United States of America vs. Southern Pacific Railroad Company et als. 184. Master's and examiner's Exhibit No. 79. E. H. Lamme, master and examiner in chancery, for defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

Certificate.

F. **(4-207 A.)** **W. J. M.**

S. S. M.

Department of the Interior.

General Land Office.

Washington, D. C., December 16, 188—.

I, S. W. Lamoreux, commissioner of the general land office do hereby certify that the annexed copy of office circular of January 24, 1867, as reprinted in 1869, in regard to selections in satisfaction of railroads and other Congressional grants, is a true and literal exemplification of a copy of such circular on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal]

S. W. LAMOREUX,

Commissioner of general land office.

GENERAL LAND OFFICE.

Circular No. 15, of January 24, 1867,

(Approved January 29, 1867.)

in regard to

SELECTIONS IN SATISFACTION OF RAILROADS

and

OTHER CONGRESSIONAL GRANTS;

with

Forms for verification of lists of selections, and also of plats of survey of such roads.

Washington;
Government Printing Office.
1869.

GENERAL LAND OFFICE.

Circular No. 15, of January 24, 1867,

(Approved January 29, 1867.)

in regard to

SELECTIONS IN SATISFACTION OF RAILROADS

and

OTHER CONGRESSIONAL GRANTS;

with

Forms for verification of lists of selections, and also

of plats of survey of such roads.

Washington;

Government Printing Office.

1869.

CIRCULAR No. 15.

Grants from Congress to States and Corporations.

Department of the Interior.

General Land Office.

January 24, 1867.

Gentlemen: By the first section of the act of Congress approved July 1, 1864, statutes 1863-64, page 335, chap. 196, it is provided that from and after the passage of that act, "in the location of lands by States and corporations, under grants from Congress for railroads and other purposes (except for agricultural colleges), the registers and receivers of the land offices for the several states and territories, in the districts where such lands may be located, for their services therein, shall be entitled to receive a fee of one dollar for each final location of one hundred and sixty acres, to be paid by the State or corporation making such location; the same to be accounted for in the same manner as fees and commissions on warrants and pre-emption locations, with limitations as to maximums of salary prescribed by existing laws, in accordance with such instructions as shall be given by the commissioner of the general land office."

First. Under this law the registers and receivers are each entitled to receive a fee of one dollar for each final location of one hundred and sixty acres, or any quantity approximate thereto, when the deficit is less than forty acres.

2. When the several quantities shall have been definitely ascertained by you to inure to the grant, as hereinafter prescribed, the fees will then be due thereon.

3. The State through its grantee, or the grantee, as the case may be, is required to file with the register and receiver of the proper land office descriptiive lists of the tracts of land claimed as inuring under the grant, within sections of —— miles each, along the line of route on both sides thereof, to be dated and verified by the signature of the selecting agent.

For agent's certificate to be attached to each list, see form A.

The party appearing as the agent of the grantee must file with the register and receiver written and satisfactory evidence under seal, showing his authority to act in the premises.

In the preparation of the descriptive lists, the register and receiver will afford the agent all reasonable facilities, taking care, however, not to interrupt the current public business.

The lists must be carefully and critically examined by the register and receiver; their accuracy tested by the plats and records of their office. When so examined and tested, and found correct in all respects, to be a final location; and you will on the payment of the requisite fees to the receiver, so certify at the foot of each list, according to form B.

After such lists have been examined, and you have attached your certificate thereto, the same will be consecutively numbered, commencing with No. 1, for each railroad or separate grant. Upon the payment of the fees and certification of the lists by you, the register will post the selections in the Tract Book, after the following manner:

"Selected ————————, 186—, by A. B., agent for the ————————Railroad Co., act ————, list No. ——"; and on the plats he will mark the tracts so selected "———————— R. R."

After the selections are properly posted and marked on the plats, the lists will be transmitted to this office, accompanied by the evidence of the agent's appointment.

Fourth. The fees will be due in all cases where the service may have been rendered subsequent to the passage of said act of 1864.

Fifth. The receiver will account for the fees thus paid in his monthly and quarterly accounts, specially setting forth in the same the particular case or cases on which such fees had accrued, giving the name of road, number and date of the list of selections for which they had been paid.

Sixth. By joint resolution No. 10 of January 30, 1865, "mineral lands" are not embraced in the grants made at the first session of the thirty-eighth Congress, unless otherwise specially provided in the act or acts making the grants.

Pacific Railroads.

Acts approved July 1, 1862, and July 2, 1864.

Seventh. By section twenty-one of the latter act, these companies are required to pay cost of "surveying, selecting, and conveying" the lands, in addition to the register and receiver's fees exacted by the act of July 1, 1864, before mentioned. This cost of surveying and conveying is, by the decision of the secretary of the interior of November 8, 1866, limited to the lands granted by act July

2, 1864. Therefore, the "cost" will be assessed and collected on the lands outside of ten miles and within twenty miles from the line of the road, where the grant is under both acts.

To ascertain the cost of "surveying," which includes both surveying in the field and office work, the company will apply to the surveyor general of the state or territory in which the lands are situated. Upon ascertaining the sums due for surveying and office work for the "section or sections of road" for which selections have been or are to be made, a deposit of those sums must be made, to the credit of the treasurer of the United States, with an authorized depositary. The duplicate of deposit must be filed with the surveyor general; whereupon he will transmit to the register and receiver of the proper land office his certificate of such payment having been made, specifying how much was for surveying and how much for office work, as per form C.

The surveyor's general's certificate, together with the triplicate certificate of deposit and the evidence of the agent's appointment, must accompany the lists of selection when transmitted by you to this office.

Eighth. Herewith is a form of title-page to be prefixed to the list of selection.

Let me here call your special attention to the necessity of great care in the examination and testing of these lists, so that all conflicts may be avoided and improper selections be excluded, and that the verified schedules may be absolutely accurate, thus avoiding embarrassment and delay to all concerned.

Ninth. Pacific Railroad act, July 2, 1864, It is pro-

vided in section 4 that the word "mineral," when it occurs in that act, shall not be held to include iron and coal. Therefore, iron and coal lands are subject to selection by the Pacific railroads; but all other minerals are expressly excluded from the grant, and must necessarily be so from all selections you may certify to this office. When the verified lists are received at the general land office, prepared and certified as above required, such definitive action as the law requires will be here taken, with the view to invest the grantee with a complete title.

These instructions will supersede those of May 30, 1866, Circular No. 9. The forms attached hereto, which are made a part hereof, will be followed in certifying to maps and lists, where the same may be applicable.

You will please acknowledge the receipt of this circular, giving the date of reception.

JOS. S. WILSON,
Commissioner.

To the registers and receivers
of the United States land offices.

Department of the Interior.
Washington, D. C., January 29, 1867.

The foregoing rules are approved.

O. H. BROWNING,
Secretary.

Form of Title-page.

———— of ————,
U. S. Land Office ————,
————, 186—.

The ————, under and by virtue of the acts of

Congress entitled, "————," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as enuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the ———— of said company; being for the ———— section (———— miles) of the same, commencing at ———— and ending ———. The selections being particularly described as follows, towit: ————.

(A.)

———— of ————, }
County of ————, } ss.

I, ————, being duly sworn, depose and say that I am the land agent of the ————, formerly the ———— that the foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said ———— company as enuring to ————, to aid in the construction of the ———— from ————, for which a grant of lands as made by the acts of Congress approved ———; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of ———— miles on each side of the line of route for a continuous distance of ————

miles, being for ———— section of said road, starting from ———— and ending ————.

————— ————, (L. S.)

Sworn and subscribed before me this ———— day of ————, ————.

————— ————.

Note.—This affidavit may be made before either the register or receiver of the United States land office.

(B.)

United States Land office.

————, 186—.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the ————, under the grant to the ————, by acts of Congress approved ————, and selected ———— by ———— ————, the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of ———— miles on each side; and that the same are not, nor any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, state or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the act of

Congress approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of ———, in full payment and discharge of said fees.

——— ———,
Register.

——— ———,
Receiver.

(C.)

U. S. Surveyor General's Office,
———————, 186—.

I, ——— ———, surveyor general for the United States in and for the ———, hereby report and certify that the ——— has this day filed with me, at ———, a duplicate certificate of deposit, No. —, dated ——— of ———, to the credit of the treasurer of the United States, showing that the sum of $—— has been deposited as cost of survey, and $—— for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands, hereto annexed, to the extent of said list.

Survey, $———.

Office work, ———.

In testimony whereof, I have hereunto set my hand and official seal.

——— ———,
Surveyor General.

Certificates for Maps of the Surveys and Permanent Locations, etc.

Form No. 1. Of engineer's affidavit to map of definite location.

Form No. 2. Of president and engineer's certificate to same.

Form No. 3. Of engineer's affidavit to map of completed portion of railroad.

Form No. 4. Of president's certificate to same.

Form No. 5. Of engineer's affidavit to map of definite location where grant was made to a State or territory.

Form No. 6. Of certificate of governor of State or territory to map of definite location.

Form No. 7. Of certificate of governor to map of completed portion of railroad.

Nos. 1, 2, 3, and 4 to be used when grant was direct to the railroad.

Nos. 1, 3, 4, 5, 6, and 7 to be used when grant was made to the State or territory.

(No. 1.)

——— of ———,
County of ———, } ss.

——— ———, of ———, in said county and ———, being duly sworn, deposeth and says that he is the chief engineer of the ———, and has been such chief engineer since the ———; that during the period above named ——— ——— were employed by this deponent as chief engineer for said railroad company, as deputy or division engineers; that the said engineers, as shown by their

field-notes, verified under oath, did actually survey and mark upon the ground the line or route of the ——— from ——— to ———, in the sections and at the times respectively designated by dates, which are included between the flagstaffs upon and along the line of route of said railroad as delineated on this map, showing the line of the public survey in connection with the surveyed line of the route; and that the acts of said deputy or division engineers in the premises were duly approved and accepted on behalf of said company by this deponent as said chief engineer of the ———.

———— ————,
Chief Engineer.

[Revenue Stamp.]

Sworn and subscribed this ——— day of ———, before me.

———— ————,
Notary public.

[Seal]

The map of location must, as shown in the above form, in all cases show the lines of the public survey in connection with the line of route.

(No. 2.)

Office of the ————————,
————————,
————————, 186—.

It is hereby certified that, in pursuance of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the

Government the use of the same for postal, military, and other purposes," wherein a grant of lands is made by the —— —— section to the ————, who are thereby authorized to construct a railroad and telegraph line from ————; and the act of July 2, 1864, amendatory thereof, which ———— to construct said railroad, this map shows the location of the line or route of the ———— from ———— to ————, being a part of the line or route of said railroad as definitely fixed, in compliance with said acts of Congress, and in pursuance of the resolution of the board of directors of said company, passed on the ————; and that the dates of the field work thereof are truly indicated along the line, from station to station, upon this map.

In testimony whereof, the ———— has caused the same to be signed by its president and engineer, and has attached hereunto its corporate seal, at ————, on the day and year first above written.

————— ————,
President.

————— ————,
Chief engineer.

[Seal.]
Attest:

————— ————,
Secretary.

(No. 3.)

County of ————. }
———— of ————, } ss.

————— ————, of ————, in said county and ————, being duly sworn, deposeth and says that he is the chief engineer of the said railroad from ———— to ————, being for ———— section of ———— miles, as shown by the line of route in connection with the lines of the public surveys on this map; that it has been completed and equipped as required by law, and that this line of route shows the correct location of the said railroad.

————— ————, [Seal]
Chief engineer.

(Revenue stamp.)

Sworn and subscribed this ———— day of ————, before me.

————— ————,
Notary public.

[Seal.]

(No. 4.)

It is hereby certified that ———— ———— is the chief engineer of the ————, and that the location of the road, as represented on this map, is correct and approved by the company; and also that the said portion of the said road has been completed and equipped in all respects as required by law.

————— ————, [Seal]
President.

Attest: ————— ————,
[Seal] Secretary.

(No. 5.)

Office of the————,

————— —————.

It is certified that, in pursuance of the act of the legislative assembly of the————, approved————, entitled "————— —————," this map shows, in connections with the public surveys, the actually surveyed line of the route of the ——— from ——— to ———, as definitely fixed in compliance with the act of Congress approved ————, and in pursuance of the resolution of the board of directors of said railroad company passed on the ———— day of ————; and that the dates of the field work thereof are truly indicated along the line, from station to station upon this map.

In testimony whereof, the ———— has hereunto attached its corporate seal, and caused the same to be signed by the president and ————, at ————, in the day and year first above written.

————— —————, President.

————— —————, Chief Engineer.

Attest: ————— —————,

[Seal]

Secretary.

(No. 6.)

I, ————— —————, governor of the ————, do hereby certify that this plat or map of the ———— has been duly filed in my Office by the railroad company, and shows in connection with the public surveys, the location of the line of route as actually surveyed of the ————— ————— "from ———— to ————,"

as definitely fixed in compliance with the act of Congress approved ————, entitled "An act ————," and with the act of the legislative assembly of the ————, approved ————, entitled "————," granting certain lands to the railroad herein named.

In testimony whereof, I have hereunto set my hand and caused to be affixed the great seal of the ————.

Done at ————, this ———— day of ————.

———— ————, Governor.

[Seal]

Attest: ———— ————,

Secretary of ————.

(No. 7.)

Executive Office, ———— ————.

———— ————

I, ———— ————, Governor of the ———— ———— do hereby certify that this plat or map of the ———— has been duly filed in my office by the said ———— company, and shows that portion of the said railroad commencing at ———— and ending at ————, which has been completed and equipped as required by the act of Congress approved ————, and the act of the legislative assembly of the ————, approved ———— ————, entitled "————," granting lands to the said railroad company.

In testimony whereof, I have hereunto set my hand and caused to be affixed the great seal of the ————.

Done at ————, this ———— day of ————.

———— ————, Governor.

Attest: ———— ————,

[Seal]

Secretary of ————.

[Endorsed]: United States Circuit Court Southern District of California, United States of America vs. Southern Pacific Railroad Company. (184) et als: Master's and Examiner's Exhibit No. 114.

E. H. Lamme, Master and Examiner in Chancery, for defendant.

Filed February 23, 1894, Wm. M. Van Dyke, Clerk. (1893—121,138-1.)

Defendants' Exhibit No. 115 before Master and Examiner Lamme.

Certificate.

F. (4-207 A.) W. J. M.
S. S. M.

Department of the Interior.
General Land Office,
Washington, D. C., Dec. 16, 1893.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of office circular of October 15, 1873, in modification of instructions of January 24, 1867, relative to selections in satisfaction of railroad and other Congressional grants, is a true and literal exemplification of a copy of such circular on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, in the city of Washington, on the day and year above written.

S. W. Lamoreux,
Commissioner of General Land Office.

[Seal]

GENERAL LAND OFFICE.

CIRCULAR OF OCTOBER 15, 1873.

in modification of

Instructions of January 24, 1867.

SELECTIONS IN SATISFACTION OF RAILROAD

and

OTHER CONGRESSIONAL GRANTS;

with

Forms for Verification of Lists of Selections, and Also of

Plats of Survey of Such Roads.

WASHINGTON:

Government Printing Office.

1873.

GENERAL LAND OFFICE.

CIRCULAR OF OCTOBER 15, 1873.

in modification of

Instructions of January 24, 1867.

SELECTIONS IN SATISFACTION OF RAILROAD

and

OTHER CONGRESSIONAL GRANTS;

with

Forms for Verification of Lists of Selections, and Also of

Plats of Survey of Such Roads.

WASHINGTON:

Government Printing Office.

1873.

Department of the Interior.

Washington, D. C., 11th September, 1873.

Sir: I have received your letter of the 9th instant, suggesting a change in the 7th section of the circular issued by your Office on the 24th January, 1867, in regard to selections of lands in satisfaction of railroad and other Congressional grants. The then secretary, Mr. Browning, held that the 21st section of the act approved 2d July, 1864, (13 Stat. 365) applied only to lands granted by that act, and the circular conformed to his ruling.

The Supreme Court of the United States at its December term, 1872, decided, in the cases of the Kansas Pacific Railway Company vs. John H. Prescott, and the same Company vs. Charles C. Culp, that said act applied also to the lands granted by the original act of 1st July, 1862.

I fully concur in your opinion that the circular should be made to conform to this decision, and you are authorized to make the required change.

The papers are herewith returned.

I am, sir, very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

Hon. Willis Drummond,
Commissioner General Land Office.

CIRCULAR.

Grants from Congress to States and Corporations.

Department of the Interior.

General Land Office, October 15, 1873.

Gentlemen: By the first section of the act of Congress approved July 1, 1864 (Statutes 1863-64, page 335, chap.

196) it is provided that from and after the passage of that act, "in the location of lands by States and corporations, under grants from Congress for railroads and other purposes (except for agricultural colleges) the Registers and Receivers for the Land Offices for the several States and Territories, in the districts where such lands may be located, for their services therein, shall be entitled to receive a fee of one dollar for each final location of one hundred and sixty acres, to be paid by the State or corporation making such location; the same to be accounted for in the same manner as fees and commissions on warrants and pre-emption locations, with limitations as to maximums of salary prescribed by existing laws, in accordance with such instructions as shall be given by the Commissioner of the General Land Office."

1st. Under this law the Registers and Receivers are each entitled to receive a fee of one dollar for each final location of one hundred and sixty acres, or any quantity approximate thereto, when the deficit is less than forty acres.

2d. When the several quantities shall have been definitely ascertained by you to inure to the grant, as hereinafter prescribed, the fees will then be due thereon.

3d. The State though its grantee, or the grantee, as the case may be, is required to file with the register and receiver of the proper Land Office descriptive lists of the tracts of land claimed as inuring under the grant within sections of ——— miles each along the line of route on both sides thereof, to be dated and verified by the signature of the selecting agent.

r agent's certificate to be attached to each list, see Form A.

The party appearing as the agent of grantee must file with the register and receiver written and satisfactory evidence, under seal, showing his authority to act in the premises.

In the preparation of the descriptive lists, the register and receiver will afford the agent all reasonable facilities, taking care, however, not to interrupt the current public business.

The lists must be carefully and critically examined by the register and receiver; their accuracy tested by the plats and records of their office. When so examined and tested, and found correct in all respects, to be a final location; and you will, on the payment of the requisite fees to the receiver, so certify at the foot of each list, according to Form B.

After such lists have been examined and you have attached your certificate thereto, the same will be consecutively numbered, commencing with No. 1, for each railroad or separate grant. Upon the payment of the fees and certification of the lists by you, the register will post the selections in the tract book, after the following manner:

"Selected ————, 186——, by A. B., agent for the ——— Railroad Company, act ————, list No. ———;" and on the plats he will mark the tracts so selected "———— R. R."

After the selections are properly posted and marked on the plats, the lists will be transmitted to this office,

accompanied by the evidence of the agent's appointment.

4th. The fees will be due in all cases where the service may have been rendered subsequent to the passage of said act of 1864.

5th. The receiver will account for the fees thus paid in his monthly and quarterly accounts, specially setting forth in the same the particular case or cases on which such fees had accrued, giving the name of road, number and date of the list of selections for which they had been paid.

6th. By joint resolution No. 10, of January 30, 1865, "mineral lands" are not embraced in the grants made at the first session of the Thirty-eighth Congress, unless otherwise specially provided in the act or acts making the grants.

Pacific Railroads.

Acts approved July 1, 1862, and July 2, 1864.

7th. By section 21 of the latter act, these companies are required to pay cost of "surveying, selecting and conveying" the lands in addition to the register and receiver's fees exacted by the act of July 1, 1864, before mentioned. This cost of surveying and conveying is, by the decision of the United States Supreme Court, at the December term, 1872, applicable to all the lands granted by acts of July 1, 1862, and July 2, 1864. Therefore the "cost" will be assessed and collected on all the lands within twenty miles from the line of the road, where the grant is under both acts.

To ascertain the cost of "surveying," which includes both surveying in the field and office work, the company

will apply to the surveyor general of the State or Territory in which the lands are situated. Upon ascertaining the sums due for surveying and office work for the "section or sections of road" for which selections have been or are to be made, a deposit of those sums must be made, to the credit of the Treasurer of the United States, with an authorized depositary. The duplicate of deposit must be filed with the surveyor general; whereupon he will transmit to the register and receiver of the proper land office his certificate of such payment having been made, specifying how much was for surveying and how much for office work, as per Form C.

The surveyor general's certificate, together with the triplicate certificate of deposit and the evidence of the agent's appointment must accompany the list of selection when transmitted by you to this office.

8th. Herewith is a form of title-page to be prefixed to the list of selection.

Let me here call your special attention to the necessity of great care in the examination and testing of these lists, so that all conflicts may be avoided and improper selections be excluded, and that the verified schedules may be absolutely accurate, thus avoiding embarrassment and delay to all concerned.

9th. Pacific Railroad act, July 2, 1864.—It is provided in section 4 that the word "mineral" when it occurs in that act, shall not be held to include iron and coal. Therefore, iron and coal lands are subject to selection by the Pacific railroads; but all other minerals are expressly excluded from the grant, and must necessarily be so from all selections you may certify to this office. When the

verified lists are received at the general land office, prepared and certified as above required, such definite action as the law requires will be here taken, with the view to invest the grantee with a complete title.

These instructions will supersede those of May 30, 1866, circular No. 9, and of January 24, 1867, circular No. 15. The forms attached hereto, which are made a part hereof, will be followed in certifying to maps and lists, where the same may be applicable.

You will please acknowledge the receipt of this circular, giving the date of reception.

———— ————,
Commissioner.

To the Registers and Receivers
Of the United States Land Offices.

Form for Title-page.

——— of ———,
United States Land Office ——,
———, 18—.

The ————, under and by virtue of the acts of Congress entitled "——— ——— nd under and in pursuance of the rules and regulat ns prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the ——— of said company; being for the —— section (—— miles) of the same, commencing at ——— and ending ———; the selections being particularly described as follows, towit: ————

(A.)

——— of ———, } ss.
County of ———. }

I, ——— ———, being duly sworn, depose and say that I am the land agent of the ———, formerly the ———; that the foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said ——— company as inuring to ———, to aid in the construction of the ——— from ———, for which a grant of lands was made by the acts of Congress approved ———; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of ——— miles on each side of the line of route for a continuous distance of ——— miles, being for ——— section of said road, starting from ——— and ending ———.

——— ———. (L. S.)

Sworn and subscribed before me this —— day of ——, ——.

——— ———.

Note.—This affidavit may be made before either the register or receiver of the United States land office.

(B.)

United States Land Office.

———, 18——.

We hereby certify that we have carefully and critically examined the foregoing list of lands, claimed by the ——, under the grant to the ———, by acts of Congress;

approved ———, and selected ——— by ——— ———, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct. And we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of ——— miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions, dated October 15, 1873, addressed by the commissioner of the general land office to register and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of ———, in full payment and discharge of said fees.

———, Register.

———, Receiver.

(C.)

United States Surveyor-General's Office.

——— ———, 18—.

I, ———, surveyor general for the United States, in and for the ———, hereby report and certify that the ———has this day filed with me, at ———, a duplicate certificate of deposit, No. ——, dated ——— of the

——, to the credit of the treasurer of the United States, showing that the sum of $——— has been deposited as cost of survey and $——— for office work, and that the said sums and the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey, $———.

Office work, $———.

In testimony whereof I have hereunto set my hand and official seal.

———,

Surveyor General.

Certificates for Maps of the Surveys and Permanent Locations, etc.

Form No. 1. Of engineer's affidavit to map of definite location.

Form No. 2. Of president and engineer's certificate to same.

Form No. 3. Of engineer's affidavit to map of completed portion of railroad.

Form No. 4. Of president's certificate to same.

Form No. 5. Of engineer's affidavit to map of definite location where grant was made to a State or Territor.

Form No. 6. Of certificate of governor of State or Territory to map of definite location.

Form No. 7. Of certificate of governor to map of complete portion of railroad.

Nos. 1, 2, 3, and 4 to be used when grant was direct to the railroad.

Nos. 1, 3, 4, 5, 6 and 7 to be used when grant was made to the State or Territory.

(No. 1.)

——— of ———,
County of ——— } ss.

———, of ———, in said county and ———, being duly sworn, deposeth and says that he is the chief engineer of the ———, and has been such chief engineer since the ———; that during the period above named ——— were employed by this deponent as chief engineer for said railroad company, as deputy or division engineers; that the said engineers, as shown by their field notes, verified under oath, did actually survey and mark upon the ground the line or route of the ——— ——, from ——— to ———, in the sections and at the times respectively designated by dates, which are included between the flagstaffs upon and along the line of route of said railroad as delineated on this map, showing the line of the public survey in connection with the surveyed line of the route; and that the acts of said deputy or division engineers in the premises were duly approved and accepted on behalf of said company by this deponent as said chief engineer of the ———.

———,
Chief Engineer.

Sworn and subscribed this —— day of ———, before me.

———,
Notary Public.

The map of location must, as shown in the above form, in all cases show the lines of the public survey in connection with the line of route.

(No. 2.)

Office of the ————————,

————————, ————————,

————————, 18—.

It is hereby certified that, in pursuance of the act of Congress, approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes," wherein a grant of lands is made by the ———— section to the ————, who are hereby authorized to construct a railroad and telegraph line from ————, and the act of July 2, 1864, amendatory thereof, which ———— to construct said railroad, this map shows the location of the line or route of the ———— from ———— to ————, being a part of the line or route of said railroad as definitely fixed in compliance with said acts of Congress and in pursuance of the resolution of the board of directors of said company, passed on the ————; and that the dates of the field work thereof are truly indicated along the line, from station to station, upon this map.

In testimony whereof the ———— has caused the same to be signed by its president and engineer, and has

attached hereunto its corporate seal at ————, on the day and year first above written.

————,
President.

————,
Chief Engineer.

[Seal] Chief Engineer.

Attest:

————,
Secretary.

(No. 3.)

County of ————.
———— of ————, } ss.

————, of ————, in said county and ——, being duly sworn, deposeth and says that he is the chief engineer of the said railroad from ——— to ———, being for ———— section of ———— miles, as shown by the line of route in connection with the lines of the public surveys on this map; that it has been completed and equipped as required by law, and that this line of route shows the correct location of the said railroad.

————,
Chief Engineer.

[Seal]

Sworn and subscribed this —— day of ————, before me.

————,
Notary Public.

[Seal]

(No. 4.)

It is hereby certified that ———— is the chief engineer of the ————, and that the location of the road, as represented on this map, is correct and approved by the company; and also that the said portion of the said road has been completed and equipped in all respects as required by law.

[Seal.] ————,

President.

Attest:

————,

[Seal] Secretary.

(No. 5.)

Office of the ————,

————.

It is hereby certified that, in pursuance of the act of the legislative assembly of the ————, approved ———— ——, entitled "————," this map shows, in connection with public surveys, the actually surveyed line of route of the ———— from ———— to ————, as definitely fixed, in compliance with the act of Congress, approved, ————, and in pursuance of the resolution of the board of directors of said railroad company, passed on the ———— day of ————; and that the dates of the field work thereof are truly indicated along the line, from station to station, upon this map.

In testimony whereof the ———— has hereunto attached its corporate seal and caused the same to be

signed by the president and ————, at ————, in the day and year first above written.

————,
President.

————,
Chief Engineer.

[Seal]
Attest:

————,
Secretary.

(No. 6.)

I, ————, governor of the ————, do hereby certify that this plat or map of the ———— has been duly filed in my office by the railroad company, and shows in connection with the public surveys, the location of the line of route as actually surveyed of the ———— "from ———— to ————," as definitely fixed in compliance with the act of Congress, approved ————, entitled "An act ————," and with the act of the legislative assembly of the ————, approved ————, entitled "————," granting certain lands to the railroad herein named.

In testimony whereof, I have hereunto set my hand and caused to be affixed the great seal of the ————.

Done at ————, this ———— day of ————.

————.
Governor.

[Seal]
Attest:

————,
Secretary of ————.

(No. 7.)

Executive Office, ———,

———,

I, ———, governor of the ———, do hereby certify that this plat or map of the ——— has been duly filed in my office by the said ——— company, and shows that portion of the said railroad commencing at ———, and ending at ———, which has been completed and equipped as required by the act of Congress, approved ———, and the act of the legislative assembly of the ———, approved ———, entitled "———," granting lands to the said railroad company.

In testimony whereof, I have hereunto set my hand and caused to be affixed the great seal of the ———.

Done at ———, this ——— day of ———.

———,

Governor.

[Seal]

Attest:

———,

Secretary of ———.

[Endorsed]: United States Circuit Court, Southern District of California, United States of America vs. Southern Pacific Railroad Company et als., 184. Master's and Examiner's Exhibit No. 115. E. H. Lamme, master and examiner in chancery. For defendants. Filed February 23, 1894. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 127 before Master and Examiner Lamme.

LETTER.

"F." 1893—126740 W. O. C. W. J. M
S. S. M. J. V. W.

Department of the Interior.
General Land Office.
Washington, D. C., December 22, 1893.

Address only the commissioner of the general land office.
Mr. John. B. Bloss, attorney, city.

Sir: Your letter of December 18, 1893, has been received. In reply you are advised that I am unable to find that any circular upon the subject of selections of lands by railroad companies and the verification of maps filed by land grant railroads was issued by this office between the reprint, in 1869, of circular issued January 24, 1867, and the issue of circular of October 15, 1873, referred to by you.

Very respectfully,
S. W. LAMOREUX,
Commissioner.

Joseph D. Redding.
Received, Dec. 28, 1893.
Answered ————
Book, ————; page, ————.

[Endorsed]: United States Circuit Court, Southern District of California, United States of America vs. Southern Pacific Railroad Company et als., 184. Master's and Examiner's Exhibit No. 127. E. H. Lamme, master and examiner in chancery. For defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit No. 164.

LAND DEPARTMENT SOUTHERN

Statement showing lands involved in
that have been selected by the Com
S. P. R. R. GRANTED

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
All	1	7 N	9 W	643.20	80	$8 04
All	3	"	"	645.98	80	8 07
All	5	"	"	646.46	80	8 08
All	7	"	"	632.38	80	7 90
All	9	"	"	640.00	80	8 00
All	11	"	"	640.00	80	8 00
All	13	"	"	640.00	80	8 00
All	15	"	"	640.00	80	8 00
All	17	"	"	640.00	80	8 00
All	1	7 N	10 W	642.44	80	8 03
All	3	"	"	645.28	80	8 07
All	5	"	"	642.99	80	8 04
All	7	"	"	633.82	80	7 92
All	9	"	"	640.00	80	8 00
All	11	"	"	640.00	80	8 00
All	13	"	"	640.00	80	8 00
All	15	"	"	640.00	80	8 00
All	17	"	"	640.00	80	8 00
All	1	7 N	11 W	641.60	80	8 02
All	3	"	"	642.20	80	8 03
N ½	11	"	"	320.00	80	4 00
All	5	7 N	12 W	644.14	80	8 05
N ½	7	"	"	322.29	80	4 04
All	1	7 N	13 W	639.00	80	7 99
NE ¼	13	"	"	160.00	80	2 00
All	1	8 N	9 W	641.82	77	8 02
All	3	"	"	644.06	77	8 05
All	5	"	"	644.28	77	8 05
All	7	"	"	628.52	77	7 86
All	9	"	"	640.00	77	8 00
All	11	"	"	640.00	77	8 00
All	13	"	"	640.00	77	8 00

Continued.

PACIFIC RAILROAD COMPANY.

San Francisco, Cal., Dec. 8, 1894.

case 600—U. S. *vs.* S. P. R. R. Co.—
pany, lands patented, fees paid, etc.

LIMITS, MAIN LINE.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
Aug. 11, 1893						
" " "						
" " "						
" " "						
" " "						
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" " "						
" " "						
" " "						
" " "						
" " "						
Apl. 10, 1893	$28 88	Apl. 8, 1893				
" " "	28 98	" " "				
" " "	28 99	" " "				
" " "	28 28	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				

Continued.

Account Continued.

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
All	15	8 N	9 W	640.00	77	8 00
All	17	"	"	640.00	77	8 00
All	19	"	"	627.00	80	7 84
All	21	"	"	640.00	80	8 00
All	23	"	"	640.00	80	8 00
All	25	"	"	640.00	80	8 00
All	27	"	"	640.00	80	8 00
All	29	"	"	640.00	80	8 00
All	31	"	"	627.58	80	7 84
All	33	"	"	640.00	80	8 00
All	35	"	"	640.00	80	8 00
All	1	8 N	10 W	641.00	77	8 01
All	3	"	"	639.16	77	7 99
All	9	"	"	640.00	77	8 00
All	11	"	"	640.00	77	8 00
All	13	"	"	640.00	80	8 00
All	15	"	"	640.00	80	8 00
All	17	"	"	640.00	80	8 00
All	19	"	"	631.52	80	7 89
All	21	"	"	640.00	80	8 00
All	23	"	"	640.00	80	8 00
All	25	"	"	640.00	80	8 00
All	27	"	"	640.00	80	8 00
All	29	"	"	640.00	80	8 00
All	31	"	"	633.60	80	7 92
All	33	"	"	640.00	80	8 00
All	35	"	"	640.00	80	8 00
All	1	8 N	11 W	643.00	77	8 04
All	3	"	"	650.58	77	8 13
All	5	"	"	651.42	77	8 14
All	7	"	"	653.28	80	8 17
All	9	"	"	640.00	80	8 00
All	13	"	"	640.00	80	8 00
All	15	"	"	640.00	80	8 00
All	17	"	"	640.00	80	8 00
Carried forward				41,778.60		$522 23

Account Continued.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Date Paid.	Conveying Fees. Amount.	Date Paid.	Patent. No.	Date.
Apl. 10, 1893	$28 80	Apl. 8, 1893				
" " "	28 80	" " "				
Aug. 11, 1893						
" " "						
" " "						
" " "						
" " "						
" " "						
" " "						
" " "						
" " "						
Apl. 10, 1893	28 85	Apl. 8, 1893				
" " "	28 76	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
Aug. 11, 1893						
" " "						
" " "						
" " "						
" " "						
" " "						
" " "						
" " "						
" " "						
" " "						
" " "						
" " "						
Apl. 10, 1893	28 94	Apl. 8, 1893				
" " "	29 28	" " "				
" " "	29 31	" " "				
Aug. 11, 1893						
" " "						
" " "						
" " "						
" " "						
	$461 87					

S. P. R. R. MAIN LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
Brought forward.....				41,778.60		$522 23
All.....	21	8 N	11 W	640.00	80	8 00
All.....	23	"	"	640.00	80	8 00
All.....	25	"	"	640.00	80	8 00
All.....	27	"	"	640.00	80	8 00
All.....	33	"	"	640.00	80	8 00
All.....	35	"	"	640.00	80	8 00
All.....	1	8 N	12 W	639.90	77	8 00
All.....	3	"	"	635.84	77	7 95
All.....	5	"	"	635.88	77	7 95
All.....	7	"	"	633.78	77	7 92
All.....	9	"	"	640.00	77	8 00
All.....	11	"	"	640.00	77	8 00
All.....	13	"	"	640.00	80	8 00
All.....	15	"	"	640.00	80	8 00
All.....	17	"	"	640.00	77	8 00
All.....	19	"	"	634.88	80	7 94
All.....	21	"	"	640.00	80	8 00
All.....	23	"	"	640.00	80	8 00
All.....	27	"	"	640.00	80	8 00
All.....	29	"	"	640.00	80	8 00
All.....	31	"	"	642.28	80	8 03
All.....	33	"	"	640.00	80	8 00
All.....	1	8 N	13 W	637.98	77	7 97
All.....	3	"	"	637.02	77	7 96
All.....	5	"	"	645.07	77	8 07
All.....	7	"	"	651.52	77	8 14
All.....	9	"	"	640.00	77	8 00
All.....	11	"	"	640.00	77	8 00
All.....	13	"	"	640.00	77	8 00
All.....	15	"	"	640.00	77	8 00
All.....	17	"	"	640.00	77	8 00
All.....	19	"	"	642.40	77	8 03
All.....	21	"	"	640.00	77	8 00
All.....	23	"	"	640.00	80	8 00
All.....	25	"	"	640.00	80	8 00
All.....	27	"	"	640.00	77	8 00

Continued.

GRANTED LIMITS.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
	$461 87					
Aug. 11, 1893						
" " "						
" " "						
" " "						
" " "						
" " "						
Apl. 10, 1893	28 80	Apl. 8, 1893				
" " "	28 61	" " "				
" " "	28 61	" " "				
" " "	28 52	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
Aug. 11, 1893						
" " "						
Apl. 10, 1893	28 80	Apl. 8, 1895				
Aug. 11, 1893						
" " "						
" " "						
" " "						
" " "						
" " "						
" " "						
Apl. 10, 1893	28 71	Apl. 8, 1893				
" " "	28 67	" " "				
" " "	29 03	" " "				
" " "	29 32	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 91	" " "				
" " "	28 80	" " "				
Aug. 11, 1893						
" " "						
Apl. 10, 1893	28 80	Apl. 8, 1893				

Continued.

Account Continued.

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
All	29	8 N	13 W	640.00	77	8 00
W ½	31	"	"	309.94	77	3 87
All	35	"	"	640.00	80	8 00
All	1	8 N	14 W	638.40	77	7 98
All	3	"	"	639.42	77	7 99
All	5	"	"	641.44	77	8 02
All	9	"	"	640.00	77	8 00
All	11	"	"	640.00	77	8 00
All	13	"	"	640.00	77	8 00
All	15	"	"	640.00	77	8 00
All	17	"	"	640.00	77	8 00
All	1	9 N	9 W	635.10	77	7 94
All	3	"	"	641.60	77	8 02
All	5	"	"	641.28	77	8 02
All	7	"	"	640.48	77	8 01
All	9	"	"	640.00	77	8 00
All	11	"	"	640.00	77	8 00
All	13	"	"	640.00	77	8 00
All	15	"	"	640.00	77	8 00
All	17	"	"	640.00	77	8 00
All	19	"	"	634.07	77	7 93
All	21	"	"	640.00	77	8 00
All	23	"	"	640.00	77	8 00
All	25	"	"	640.00	77	8 00
All	27	"	"	640.00	77	8 00
All	29	"	"	640.00	77	8 00
All	31	"	"	631.09	77	7 89
All	33	"	"	640.00	77	8 00
All	35	"	"	640.00	77	8 00
All	1	9 N	10 W	643.52	77	8 04
All	3	"	"	649.18	77	8 11
All	5	"	"	650.20	77	8 13
All	7	"	"	642.30	77	8 03
All	9	"	"	640.00	77	8 00
All	11	"	"	640.00	77	8 00
All	13	"	"	640.00	77	8 00
All	15	"	"	640.00	77	8 00
Carried forward				88,173.17		$1,102 17

Account Continued.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Date Paid.	Conveying Fees. Amount.	Date Paid.	Patent. No.	Date.
Apl. 10, 1893	28 80	Apl. 8, 1893				
" " "	13 95	" " "				
Aug. 11, 1893						
Apl. 10, 1893	28 73	Apl. 8, 1893				
" " "	28 77	" " "				
" " "	28 86	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 58	" " "				
" " "	28 87	" " "				
" " "	28 86	" " "				
" " "	28 82	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 53	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 40	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 96	" " "				
" " "	29 21	" " "				
" " "	29 26	" " "				
" " "	28 90	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
	$2,031 35					

S. P. R. R. MAIN LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
Brought forward.....				88,173.17		$1,102 17
All.....	17	9 N	10 W	640.00	77	8 00
All.....	19	"	"	634.40	77	7 91
All.....	21	"	"	640.00	77	8 00
All.....	23	"	"	640.00	77	8 00
All.....	25	"	"	640.00	77	8 00
All.....	27	"	"	640.00	77	8 00
All.....	29	"	"	640.00	77	8 00
All.....	31	"	"	627.60	77	7 85
All.....	33	"	"	640.00	77	8 00
All.....	35	"	"	640.00	77	8 00
All.....	1	9 N	11 W	645.34	77	8 07
All.....	3	"	"	649.98	77	8 12
All.....	5	"	"	646.04	77	8 08
All	7	"	"	652.84	77	8 16
All.....	9	"	"	640.00	77	8 00
All.....	11	"	"	640.00	77	8 00
All.....	13	"	"	640.00	77	8 00
All.....	15	"	"	640.00	77	8 00
All.....	17	"	"	640.00	77	8 00
All.....	19	"	"	650.08	77	8 13
All.....	21	"	"	640.00	77	8 00
All.....	23	"	"	640.00	77	8 00
All.....	25	"	"	640.00	77	8 00
All.....	27	"	"	640.00	77	8 00
All.....	29	"	"	640.00	77	8 00
All.....	31	"	"	647.50	77	8 09
All	33	"	"	640.00	77	8 00
All.....	35	"	"	640.00	77	8 00
All.....	1	9 N	12 W	642.13	77	8 02
All.....	3	"	"	642.92	77	8 04
All.....	5	"	"	640.64	77	8 01
All.....	7	"	"	650.52	77	8 13
All.....	9	"	"	640.00	77	8 00
All.....	11	"	"	640.00	77	8 00
All	13	"	"	640.00	77	8 00
All.....	15	"	"	640.00	77	8 00

Continued.

GRANTED LIMITS.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
	$2,031 35					
Apl. 10, 1893	28 80	Apl. 8, 1893				
" " "	28 55	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 24	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	29 04	" " "				
" " "	29 25	" " "				
" " "	29 07	" " "				
" " "	29 38	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	29 25	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	29 14	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 90	" " "				
" " "	28 93	" " "				
" " "	28 83	" " "				
" " "	29 27	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				

Continued.

Account Continued.

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
All	21	9 N	12 W	640.00	77	$8 00
All	23	"	"	640.00	77	8 00
All	25	"	"	640.00	77	8 00
All	27	"	"	640.00	77	8 00
All	29	"	"	640.00	77	8 00
All	31	"	"	634.46	77	7 93
All	33	"	"	640.00	77	8 00
All	35	"	"	640.00	77	8 00
All	1	9 N	13 W	640.38	77	8 00
All	3	"	"	640.38	77	8 00
N ½ of SE ¼; NE ¼; W ½	7	"	"	572.04	77	7 15
W ½ of NW ¼	9	"	"	80.00	77	1 00
E ½ of NW ¼; NE ¼; S ½	9	"	"	560.00	77	7 00
All 11	11	"	"	640.00	77	8 00
All 13	13	"	"	640.00	77	8 00
W ½ of NE ¼; NW ¼ of SE ¼; W ½	17	"	"	440.00	77	5 50
E ½ of NE ¼; S ½ of SE ¼; NE ¼ of SE ¼	17	"	"	200.00	77	2 50
All	19	"	"	651.38	77	8 14
NE ¼ of NW ¼; W ½ of NW ¼; NW ¼ of SW ¼	31	"	"	171.01	77	2 14
SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; E ½	31	"	"	484.73	77	6 06
All	19	9 N	14 W	637.22	77	7 97
All	21	"	"	640.00	77	8 00
All	23	"	"	640.00	77	8 00
All	25	"	"	640.00	77	8 00
All	27	"	"	640.00	77	8 00
All	29	"	"	640.00	77	8 00
All	31	"	"	631.28	77	7 89
All	33	"	"	640.00	77	8 00
Carried forward				127,206.04		$1,590 07

Account Continued.

Receiv- Fees. Date Paid.	Surveying Fees Amount.	Surveying Fees Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
Apl. 10, 1893	$ 28 80	Apl. 8, 1893				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 55	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 82	" " "				
" " "	28 82	" " "				
" " "	25 74	" " "			22	July 10, 1894
" " "	3 60	" " "			22	" " "
" " "	25 20	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	19 80	" " "			22	July 10, 1894
" " "	9 00	" " "				
" " "	29 31	" " "			22	July 10, 1894
" " "	7 70	" " "			22	" " "
" " "	21 81	" " "				
" " "	28 67	" " "			22	July 10, 1894
" " "	28 80	" " "			22	" " "
" " "	28 80	" " "			22	" " "
" " "	28 80	" " "			22	" " "
" " "	28 80	" " "			22	" " "
" " "	28 80	" " "			22	" " "
" " "	28 41	" " "			22	" " "
" " "	28 80	" " "			22	" " "
	$3,787 83					

S. P. R. R. MAIN LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
Brought forward.....				127,206.04		$1,590 07
All.....	35	9 N	14 W	640.00	77	8 00
All.....	17	9 N	15 W	640.00	77	8 00
W ½ of W ½.....	19	"	"	155.84	42	1 95
E ½ of W ½; E ½.....	19	"	"	480.00	77	6 00
S ½.....	21	"	"	320.00	77	4 00
All.....	23	"	"	640.00	77	8 00
All.....	25	"	"	640.00	77	8 00
S ½ of SW ¼; SE ¼; N ½..	27	"	"	560.00	77	7 00
N ½ of SW ¼.....	27	"	"	80.00	77	1 00
All.....	29	"	"	640.00	77	8 00
All.....	33	"	"	640.00	77	8 00
N ½ of NW ¼; NE ¼	35	"	"	240.00	77	3 00
S ½ of NW ¼; S ½.....	35	"	"	400.00	77	5 00
All.....	13	"	16 W	640.00	42	8 00
NE ¼ of SE ¼; N ½.....	23	"	"	360.00	77	4 50
NW ¼ of SE ¼; S ½ of SE ¼; SW ¼.....	23	"	"	280.00	77	3 50
E ½ of NE ¼; NE ¼ of SE ¼;	25	"	"	120.00	42	1 50
All.....	23	10 N	9 W	640.00	77	8 00
All.....	25	"	"	640.00	77	8 00
All.	29	"	"	640.00	77	8 00
All.....	31	"	"	649.94	77	8 12
All.....	33	"	"	640.00	77	8 00
All.....	35	"	"	640.00	77	8 00
All.....	25	10 N	10 W	640.00	77	8 00
All.....	27	"	"	640.00	77	8 00
All.	29	"	"	640.00	77	8 00
All.....	31	"	"	643.20	77	8 14
All.....	33	"	"	640.00	77	8 00
All.....	35	"	"	640.00	77	8 00
All.....	25	10 N	11 W	640.00	77	8 00
All.....	27	"	"	640.00	77	8 00
All.....	29	"	"	640.00	77	8 00
All	31	"	"	654.28	77	8 18
All.....	33	"	"	640.00	77	8 00
All.....	35	"	"	640.00	77	8 00
All.....	25	10 N	12 W	640.00	77	8 00
All.....	27	"	"	640.00	77	8 00
All.....	29	"	"	640.00	77	8 00
All.....	31	"	"	653.98	77	8 17
All.....	33	"	"	640.00	77	8 00
All.....	35	"	"	640.00	77	8 00
Total.....				150,083.28		$1,876 13

GRANTED LIMITS.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
	$3,787 83					
Apl. 10, 1893	28 80	Apl. 8, 1893			22	July 10, 1894
" " "	28 80	" " "			22	" " "
June 1, 1888	7 01	Aug. 1, 1888			22	" " "
Apl. 10, 1893	21 60	Apl. 8, 1893			22	" " "
" " "	14 40	" " "			22	" " "
" " "	28 80	" " "			22	" " "
" " "	28 80	" " "			22	" " "
" " "	25 20	" " "			22	" " "
" " "	3 60	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	10 80	" " "			22	July 10, 1894
" " "	18 00	" " "			22	" " "
June 1, 1888	28 80	Aug. 1, 1888			22	" " "
Apl. 10, 1893	16 20	Apl. 8, 1893				
" " "	12 60	" " "				
June 1, 1888	5 40	Aug. 1, 1888				
Apl. 10, 1893	28 80	Apl. 8, 1893				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	29 25	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 94	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	29 44	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	29 43	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
	$4,817 80					

LAND DEPARTMENT SOUTHERN

Statement showing lands involved in
that have been selected by the Com

S. P. R. R. MAIN LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.

NONE.

PACIFIC RAILROAD COMPANY.

San Francisco, Cal., Dec. 8, 1894.

case 600—U. S. *vs.* S. P. R. R. Co.—
pany, lands patented, fees paid, etc.

INDEMNITY LIMITS.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.

LAND DEPARTMENT SOUTHERN

Statement showing lands involved in
that have been selected by the Com
S. P. R. R. BRANCH LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
All	29	6 N	10 W	640.00	21	$8 00
All	31	"	"	642.78	21	8 03
All	33	"	"	640.00	21	8 00
All	5	7 N	11 W	646.78	21	8 08
N ½	7	"	"	323.09	21	4 04
N ½	9	"	"	320.00	21	4 00
All	1	7 N	12 W	643.00	21	8 03
All	3	"	"	645.98	21	8 07
N ½	9	"	"	320.00	30	4 00
N ½	11	"	"	320.00	21	4 00
All	3	7 N	13 W	636.60	21	7 96
All	5	"	"	637.80	21	7 97
N ½	7	"	"	318.20	17	3 98
N ½	9	"	"	320.00	21	4 00
NW ¼	11	"	"	160.00	30	2 00
All	1	7 N	14 W	636.86	17	7 96
All	3	"	"	631.20	17	7 89
All	5	"	"	628.74	17	7 86
N ½	7	"	"	319.60	17	4 00
N ½	9	"	"	320.00	17	4 00
N ½	11	"	"	320.00	17	4 00
All	1	7 N	15 W	640.00	17	8 00
N ½	3	"	"	320.00	17	4 00
N ½ of NE ¼; E ½ of NW ¼	5	"	"	160.00	17	2 00
NE ¼	11	"	"	160.00	30	2 00
All	5	8 N	10 W	630.28	21	7 99
All	7	"	"	628.84	21	7 86
All	11	8 N	11 W	640.00	21	8 00
All	19	"	"	654.78	21	8 18
All	29	"	"	640.00	21	8 00
All	31	"	"	654.88	21	8 19
All	25	8 N	12 W	640.00	21	8 00

Continued.

PACIFIC RAILROAD COMPANY.

San Francisco, Cal., December 8, 1894.

case 600—U. S. *vs.* S. P. R. R. Co.—

pany, lands patented, fees paid, etc.

GRANTED LIMITS.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
Jan. 16, 1885	$28 80	Nov. 25, 1884				
" " "	28 93	" " "				
" " "	28 80	" " "				
" " "	29 11	" " "				
" " "	14 54	" " "				
" " "	14 40	" " "				
" " "	28 94	" " "				
" " "	29 07	" " "				
Apl. 23, 1885	14 40	Apl. 4, 1885				
Jan. 16, 1885	14 40	Nov. 25, 1884				
" " "	28 65	" " "				
" " "	28 70	" " "				
July 19, 1884	14 32	July 9, 1884			9	Jan. 9, 1885
Jan. 16, 1885	14 40	Nov. 25, 1884				
Apl. 23, 1885	7 20	Apl. 4, 1885				
July 19, 1884	28 66	July 9, 1884			9	Jan. 9, 1885
" " "	28 40	" " "			9	" " "
" " "	28 29	" " "			9	" " "
" " "	14 38	" " "			9	" " "
" " "	14 40	" " "			9	" " "
" " "	14 40	" " "			9	" " "
" " "	28 80	" " "			9	" " "
" " "	14 40	" " "			9	" " "
" " "	7 20	" " "			9	" " "
Apl. 23, 1885	7 20	Apl. 4, 1885				
Jan. 16, 1885	28 77	Nov. 25, 1884				
" " "	28 30	" " "				
" " "	28 80	" " "				
" " "	29 47	" " "				
" " "	28 80	" " "				
" " "	29 47	" " "				
" " "	28 80	" " "				

Continued.

Account Continued.

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
All	35	8 N	13 W	640.00	21	8 00
E ½	31	8 N	13 W	320.00	30	4 00
All	33	"	"	640.00	21	8 00
All	7	8 N	14 W	629.06	21	7 86
W ½	25	"	"	320.00	30	4 00
All	27	"	"	640.00	21	8 00
All	35	"	"	640.00	21	8 00
All	5	8 N	15 W	640.00	21	8 00
E ½ of E ½	7	"	"	160.00	21	2 00
All	9	"	"	640.00	21	8 00
All	11	"	"	640.00	21	8 00
All	13	"	"	640.00	21	8 00
All	15	"	"	640.00	21	8 00
All	17	"	"	640.00	21	8 00
E ½ of E ½	19	8 N	15 W	160.00	21	2 00
All	21	"	"	640.00	21	8 00
All	27	"	"	640.00	21	8 00
All	29	"	"	640.00	21	8 00
All	33	"	"	640.00	21	8 00
All	35	"	"	640.00	21	8 00
All	17	9 N	12 W	640.00	30	8 00
All	19	"	"	642.44	30	8 03
All	15	9 N	13 W	640.00	30	8 00
All	21	"	"	640.00	30	8 00
All	23	"	"	640.00	30	8 00
All	25	"	"	640.00	30	8 00
All	27	"	"	640.00	30	8 00
All	29	"	"	640.00	30	8 00
All	33	"	"	640.00	30	8 00
All	35	"	"	640.00	30	8 00
E ½	31	9 N	15 W	320.00	21	4 00
E ½ of NE ¼	3	1 N	4 W	80.00	34	1 00
N ½ of NE ¼	11	"	"	80.00	34	1 00
Carried forward				33,919.91		$423 98

Account Continued.

Receiv-Fees. Date Paid.[1]	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
Jan. 16, 1885	$28 80	Nov. 25, 1884				
Apl. 23, 1885	14 40	Apl. 4, 1885				
Jan. 16, 1885	28 80	Nov. 25, 1884				
" " "	28 31	" " "				
Apl. 23, 1885	14 40	Apl. 4, 1885				
Jan. 16, 1885	28 80	Nov. 25, 1884				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	7 20	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	7 20	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
Apl. 23, 1885	28 80	Apl. 4, 1885				
" " "	28 91	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
Jan. 16, 1885	14 40	Nov. 25, 1884				
Mch. 15, 1886	3 60	Mch. 10, 1886				
" " "	3 60	" " "				
	$1,526 02					

S. P. R. R. BRANCH LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
Brought forward.....				33,919.91		$423 98
SW ¼ of NE ¼; W ½ of SE ¼; W ½.....	11	1 N	4 W	440.00	13	5 50
Lots 1 and 2; NE ¼ of SW ¼.	13	"	"	113.54	11	1 42
All.....	19	1 N	5 W	637.97	30	7 97
All.....	27	"	"	530.30	11	6 63
All.....	29	"	"	640.00	30	8 00
All.....	31	"	"	639.26	30	7 99
SE ¼.....	33	"	"	160.00	30	2 00
SW ¼	9	1 N	6 W	160.00	11	2 00
W ½.....	11	"	"	320.00	11	4 00
S ½.....	13	"	"	320.00	11	4 00
All.....	15	"	"	640.00	11	8 00
E ½ of NE ¼	17	"	"	80.00	11	1 00
W ½ of NW ¼; SW ¼.....	17	"	"	240.00	30	3 00
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½.....	23	"	"	560.00	4	7 00
All.....	25	"	"	640.00	4	8 00
All.....	27	"	"	640.00	4	8 00
All.....	29	"	"	640.00	4	8 00
All.....	31	"	"	642.92	4	8 04
All.....	35	"	"	640.00	4	8 00
S ½ of SW ¼	17	1 N	7 W	80.00	21	1 00
Lots 1, 2, 3, and 4	19	"	"	141.58	21	1 77
Lots 1, 2, 3, 4.....	21	"	"	136.56	4	1 71
All.....	23	"	"	640.00	21	8 00
Lots 1, 2, 3, 4; E ½ of E ½...	27	"	"	173.48	4	2 17
E ½ of NE ¼; NW ¼ of NE ¼; Lots 1, 2, 3, 4; SE ¼ of SE ¼	35	"	"	165.88	4	2 07
NE ¼.....	13	1 N	8 W	160.00	63	Rejected
NW ¼	13	"	"	160.00	2	2 00
W ½ of SW ¼	13	"	"	80.00	4	1 00
SE ¼	13	"	"	160.00	63	Rejected
SE ¼	19	"	"	160.00	1	2 00
SW ¼	19	"	"	160.60	21	2 01
S ½.....	21	"	"	320.00	2	4 00

Continued.

GRANTED LIMITS.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
	$1,526 02					
Apl. 16, 1884	19 80	Apl. 7, 1884			9	Jan. 9, 1885
May 25, 1883	5 10	May 15, 1883			6	Dec. 27, 1883
Apl. 23, 1885	28 71	Apl. 4, 1885				
May 25, 1883	23 86	May 15, 1883			6	Dec. 27, 1883
Apl. 23, 1885	28 80	Apl. 4, 1885				
" " "	28 77	" " "				
" " "	7 20	" " "				
May 25, 1883	7 20	May 15, 1883			6	Dec. 27, 1883
" " "	14 40	" " "			6	" " "
" " "	14 40	" " "			6	" " "
" " "	28 80	" " "			6	" " "
" " "	3 60	" " "			6	" " "
Apl. 23, 1885	10 80	Apl. 4, 1885				
July 14, 1882	25 20				6	Dec. 27, 1883
" " "	28 80				6	" " "
" " "	28 80				6	" " "
" " "	28 80				6	" " "
" " "	28 93				6	" " "
" " "	28 80				6	" " "
Jan. 16, 1885	3 60	Nov. 25, 1884				
" " "	6 37	" " "				
July 14, 1882	6 15				6	Dec. 27, 1883
Jan. 16, 1885	28 80	Nov. 25, 1884				
July 14, 1882	7 81				6	Dec. 27, 1883
" " "	7 46				6	" " "
	7 20	July 2, 1891				
July 2, 1877	7 20				2	Apl. 4, 1879
" 14, 1882	3 60				6	Dec. 27, 1883
	7 20	July 2, 1891				
Jan. 28, 1876						
" 16, 1885	7 23	Nov. 25, 1884				
July 2, 1877	14 40				2	Apl. 4, 1879

Continued.

Account Continued.

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
N ½	23	"	"	320.00	2	4 00
Lots 1, 2, 3	25	"	"	67.51	2	84
NW ¼	27	"	"	160.00	18	2 00
S ½ of SW ¼	15	1 N	9 W	80.00	11	1 00
S ½ of SE ¼	19	"	"	80.00	11	1 00
N ½ of SE ¼; N ½	19	"	"	403.76	30	5 05
SW ¼	19	"	"	164.00	21	2 05
NW ¼ of NE ¼; S ½	21	"	"	360.00	11	4 50
SW ¼ of SW ¼	15	1 N	10 W	40.00	11	50
E ½ of NE ¼; N ½ of SE ¼; Lots 5 and 6	19	"	"	189.43	11	2 37
Lot 1	21	"	"	27.18	30	34
Lot 2	21	"	"	11.28	21	14
Lots 3 and 4; NE ¼ of NE ¼; NE ¼ of SW ¼	21	"	"	155.44	11	1 94
N ½ of NE ¼	23	"	"	80.00	28	1 00
S ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; SE ¼	23	"	"	320.00	30	4 00
S ½ of SW ¼	23	"	"	80.00	11	1 00
N ½ of NE ¼	25	"	"	80.00	17	1 00
E ½ of SW ¼; Lot 2; SE ¼	7	1 N	11 W	283.75	11	3 55
NW ¼ of NW ¼	13	"	"	40.00	11	50
SW ¼ of NW ¼	13	"	"	40.00	11	50
E ½ of SW ¼	13	"	"	80.00	1	1 00
E ½ of NE ¼; NE ¼ of NW ¼; W ½ of NW ¼; E ½ of SE ¼; NW ¼ of SE ¼; NW ¼ of SW ¼; Lots 1, 2, 3	15	"	"	431.12	1	5 39
Carried forward				48,635.47		$603 93

Account Continued.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
July 2, 1877	$14 40				2	Apl. 4, 1879
" " "	3 04				2	" " "
Dec. 6, 1884	7 20	Sept. 27, 1884				
May 25, 1883	3 60	May 15, 1883			6	Dec. 27, 1883
" " "	3 60	" " "			6	" " "
Apl. 23, 1885	18 17	Apl. 14, 1885				
Jan. 16, 1885	7 38	Nov. 25, 1884				
May 25, 1883	16 20	May 15, 1883			6	Dec. 27, 1883
" " "	1 80	" " "			6	" " "
" " "	8 52	" " "			6	" " "
Apl. 23, 1885	1 22	Apl. 4, 1885				
Jan. 16, 1885	51	Nov. 25, 1884				
May 25, 1883	7 00	May 15, 1883			6	Dec. 27, 1883
July 13, 1885	3 60	Apl. 4, 1885				
Apl. 23, 1885	14 40	" " "				
May 25, 1883	3 60	May 15, 1883				
July 19, 1884	3 60	July 9, 1884			9	July 9, 1885
May 25, 1883	12 77	May 15, 1883			8	Aug. 8, 1884
" " "	1 80	" " "			6	Dec. 27, 1883
" " "	1 80	" " "				
Jan. 28, 1876					1	Mch. 29, 1876
" " "					1	" " "
	$2,158 02					

S. P. R. R. BRANCH LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
Brought forward.....				48,635.47		$603 93
W ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼.....	15	1 N	11 W	160.00	5	2 00
S ½ of NE ¼; SE ¼ of NW ¼; N ½ of SE ¼; Lots 3 and 4.....	17	"	"	228.77	1	2 86
Lots 1, 3, 4; NW ¼ of NE ¼; SW ¼ of NW ¼.....	23	"	"	162.11	1	2 03
Lots 1, 2, 3, 4, 5; NE ¼ of SE ¼.....	3	1 N	12 W	220.28	2	2 75
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9.....	5	"	"	264.48	2	3 31
Lots 1, 2, 3, 4, 5.....	11	"	"	131.75	2	1 65
Lots 1, 2, 4.....	13	"	"	70.26	2	88
Lots 1, 2, 3, 4, 5; SW ¼ of NE ¼; S ½ of NW ¼; S ½.....	3	1 N	14 W	619.77	2	7 75
Lots 1 and 2.....	5	"	"	7.39	2	09
All.....	9	"	"	542.24	2	6 78
Lots 1, 2, 3, 4; W ½ of NW ¼.	11	"	"	134.24	2	1 68
Lot 1	15	"	"	2.92	2	04
Lots 1, 2, 3, 4.....	27	"	"	78.49	4	98
Lots 1, 2, 3, 4; S ½ of S ½.....	31	"	"	316.40	4	3 96
Lots 1, 2, 3, 4; S ½ of S ½.....	33	"	"	249.20	4	3 12
E ½	35	"	"	320.00	4	4 00
W ½ of SW ¼	11	2 N	3 W	80.00	17	1 00
S ½.....	21	"	"	320.00	17	4 00
SE ¼	13	2 N	4 W	160.00	17	2 00
NW ¼	3	3 N	19 W	160.00	4	2 00
E ½ of NE ¼	5	"	"	79.95	11	1 00
All.....	15	4 N	19 W	640.00	4	8 00
E ½ of E ½.....	17	"	"	160.00	4	2 00
All.....	21	"	"	640.00	4	8 00
W ½.....	23	"	"	320.00	11	4 00
SW ¼ of NW ¼; NW ¼ of SE ¼; E ½ of SE ¼; SW ¼..	25	"	"	320.00	33	Rejected
NW ¼ of NW ¼	25	"	"	40.00	8	"
N ½	27	"	"	320.00	11	4 00
E ½ of NE ¼; NE ¼ of SE ¼	29	"	"	120.00	4	1 50
SE ¼ of NE ¼	33	"	"	40.00	4	50
Lots 2, 3, 4	33	"	"	112.81	4	1 41

Continued.

GRANTED LIMITS.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
	$2,158 02					
Mch. 9, 1893	7 20				6	Dec. 27, 1883
Jan. 28, 1876					1	Mch. 29, 1876
" " "					1	" " "
July 2, 1877	9 91				2	Apl. 4, 1879
" " "	11 90				2	" " "
" " "	5 93				2	" " "
" " "	3 16				2	" " "
" " "	27 89				2	" " "
" " "	33				2	" " "
" " "	24 40				2	" " "
" " "	6 04				2	" " "
" " "	13				2	" " "
" 14, 1882	3 53				6	Dec. 27, 1883
" " "	14 24				6	" " "
" " "	11 21				6	" " "
" " "	14 40				6	" " "
" 19, 1884	3 60	July 9, 1884				
" " "	14 40	" " "				
" " "	7 20	" " "				
" 14, 1882	7 20				6	Dec. 27, 1883
May 25, 1883	3 60	May 15, 1883			6	" " "
July 14, 1882	28 80				6	" " "
" " "	7 20				6	" " "
" " "	28 50				6	" " "
May 25, 1883	14 40	May 15, 1883			6	" " "
	14 40	Aug. 13, 1885				
	1 80	May 3, 1883				
May 25, 1883	14 40	May 15, 1883			6	Dec. 27, 1883
July 14, 1882	5 40				6	" " "
" " "	1 80	" " "			6	" " "
" " "						

Continued.

Account Continued.

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
NW ¼ of SE ¼; NE ¼ of SW ¼	33	4 N	10 W	80.00	11	$1 00
E ½ of SE ¼	33	"	"	80.00	33	Rejected
NE ¼	5	1 S	6 W	167.00	2	2 09
NW ¼	9	"	"	160.00	2	2 00
All	21	1 S	7 W	640.00	2	8 00
All	1	1 S	8 W	640.60	2	8 01
NE ¼; W ½ of SE ¼; E ½ of W ½	3	"	"	401.20	2	5 02
All	11	"	"	640.00	2	8 00
All	15	"	"	416.00	2	5 20
Lots 1 and 2	21	"	"	32.10	2	40
N ½ of NE ¼	23	"	"	80.00	2	1 00
Lots 1, 2, 3, 4	25	"	"	138.34	2	1 73
S ½ of S ½	27	"	"	160.00	2	2 00
Lots 1 and 2	33	"	"	58.86	2	74
Lots 1, 2, 3, 4	35	"	"	30.26	2	23
Lots 1, 2, 3, 4	33	1 S	9 W	114.36	17	1 43
Lots 5, 6, 7	33	"	"	79.95	17	1 00
Lots 1, 2, 3, 4; S ½ of SW ¼	35	"	"	176.00	17	2 20
Lot 1	1	1 S	11 W	14.97	1	19
Lot 1	7	"	"	40.00	2	50
Lots 5, 6, 7, 8	7	"	"	42.24	2	53
All	13	"	"	481.54	1	6 02
Lots 1 and 5	3	1 S	12 W	19.76	1	25
Lots 2 and 3	5	"	"	6.87	2	09
NE ¼	7	"	"	160.00	2	2 00
Carried forward				60,516.58		$747 00

Account Continued.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
May 25, 1883	$ 3 60	May 15, 1883				
	3 60	Aug. 13, 1885				
July 2, 1877	7 51				2	Apl. 4, 1879
" " "	7 20				2	" " "
" " "	28 80				2	" " "
" " "	28 83				2	" " "
" " "						
" " "	28 80				2	" " "
" " "	18 72				2	" " "
" " "	1 44				2	" " "
" " "	3 60				2	" " "
" " "	6 23				2	" " "
" " "	7 20				2	" " "
" " "	2 65				2	" " "
" " "	1 36				2	" " "
" 19, 1884	5 15	July 9, 1884				
" " "	3 60	" " "			9	Jan. 9, 1885
" " "	7 92	" " "			9	" " "
" 28, 1876					1	Mch. 29, 1876
" 2, 1877	1 80				4	June 26, 1882
" " "	1 90				2	Apl. 4, 1879
Jan. 28, 1876					1	Mch. 29, 1876
" " "					1	" " "
July 2, 1877	31				2	Apl. 4, 1879
" " "	7 20	" " "			2	" " "
	$2,628 71					

S. P. R. R. BRANCH LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
Brought forward.....				60,516.58		$747 00
NE ¼ of SW ¼.....	7	1 S	12 W	40.00	1	50
Lots 3 and 4.....	7	"	"	83.16	2	1 04
Lot 1; NW ¼ of NW ¼.....	11	"	"	70.90	2	89
Lot 2; SE ¼ of NW ¼; NE ¼ of SW ¼	11	"	"	83.50	1	1 04
E ½ of NE ¼	13	"	"	80.00	2	1 00
NE ¼.....	15	"	"	160.00	1	2 00
NE ¼; E ½ of SE ¼	17	"	"	240.00	1	3 00
Lot 1....	19	"	"	42.87	2	54
N ½ of SE ¼.....	19	"	"	80.00	1	1 00
NW ¼ of SW ¼; SE ¼; N ½	29	"	"	520.00	2	6 50
E ½ of E ½; NW ¼.....	31	"	"	327.61	1	4 10
Lot 1.....	11	1 S	13 W	.19	1	01
Lots 1 and 4; NE ¼ of NE ¼; SE ¼ of SE ¼	13	"	"	99.28	1	1 24
Lots 3 and 4.....	25	"	"	18.57	2	23
Lots 1 and 2; E ½ of SE ¼...	3	1 S	14 W	124.53	1	1 56
Lots 3, 4, 5, 7, 10; SW ¼ of NW ¼; S ½ of NE ¼	3	"	"	259.98	4	3 25
All.....	5	"	"	640.54	4	8 01
N ½	7	"	"	320.44	4	4 01
N ½ of SE ¼; SW ¼ of SE ¼; Lot 3.....	7	"	"	153.33	1	1 92
SE ¼	11	"	"	160.00	1	2 00
NW ¼	25	"	"	160.00	2	2 00
E ½ of NW ¼; NE ¼; S ½..	1	1 S	15 W	560.00	4	7 00
S ½ of NW ¼; NE ¼; S ½..	11	"	"	560.00	4	7 00
Lot 1.....	3	2 S	11 W	21.35	1	27
NE ¼ of SE ¼; S ½ of SE ¼	9	"	"	120.00	1	1 50
Lots 1 and 2.....	3	2 S	13 W	4.00	1	05
Lot 1.....	5	"	"	2.00	1	03
S ½ of NE ¼.....	11	2 S	14 W	80.00	1	1 00
SW ¼	13	"	"	160.00	1	2 00
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10; E ½ of SE ¼; S ½ of SW ¼	17	"	"	392.59	1	4 91
Total.....				66,081 42		$816 60

GRANTED LIMITS.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
	$2,628 71					
Jan. 28, 1876					1	Mch. 29, 1876
July 2, 1877	3 74				4	June 26, 1882
" " "	3 19				2	Apl. 4, 1879
Jan. 28, 1876					1	Mch. 29, 1876
" 2, 1877	3 60				2	Apl. 4, 1879
" 28, 1876					1	Mch. 29, 1876
" " "					1	" " "
July 2, 1877	1 93				2	Apl. 4, 1879
Jan. 28, 1876					1	Mch. 29, 1876
July 2, 1877	23 40				2	Apl. 4, 1879
Jan. 28, 1876					1	Mch. 29, 1876
" " "					1	" " "
" " "					1	" " "
July 2, 1877	84				2	Apl. 4, 1879
Jan. 28, 1876					1	Mch. 29, 1876
July 14, 1882	11 70				6	Dec. 27, 1883
" " "	28 82				6	" " "
" " "	14 42				6	" " "
Jan. 28, 1876					1	Mch. 29, 1876
" " "					1	" " "
July 2, 1877	7 20				2	Apl. 4, 1879
" 14, 1882	25 20				6	Dec. 27, 1883
" " "	25 20				6	" " "
Jan. 28, 1876					1	Mch. 29, 1876
" " "					1	" " "
" " "					1	" " "
" " "					1	" " "
" " "	3 60				4	June 26, 1882
" " "					1	Mch. 29, 1876
" " "					1	" " "
	$2,781 55					

LAND DEPARTMENT SOUTHERN

Statement showing lands involved in
that have been selected by the Com

S. P. R. R. BRANCH LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
SW ¼ of SW ¼	25	5 N	3 W	40.00	30	$ 50
S ½ of S ½	27	"	"	160.00	30	2 00
SW ¼ of NE ¼; S ½ of NW ¼; S ½	29	"	"	440.00	30	5 50
All	31	"	"	624.76	30	7 81
All	33	"	"	640.00	30	8 00
All	35	"	"	640.00	30	8 00
S ½	19	5 N	4 W	304.36	25	3 80
S ½	21	"	"	320.00	25	4 00
S ½ of S ½	23	"	"	160.00	12	2 00
E ½	25	"	"	320.00	25	4 00
W ½	25	"	"	320.00	12	4 00
All	27	"	"	640.00	25	8 00
All	29	"	"	640.00	25	8 00
All	31	"	"	614.68	25	7 68
All	33	"	"	640.00	25	8 00
All	35	"	"	640.00	25	8 00
All	27	5 N	6 W	640.00	25	8 00
All	33	"	"	640.00	25	8 00
All	35	"	"	640.00	25	8 00
W ½	13	6 N	7 W	320.00	25	4 00
All	33	"	"	640.00	25	8 00
W ½ of NW ¼	5	7 N	15 W	80.00	6	1 00
W ½ of SW ¼	5	"	"	80.00	26	Rejected
All	3	7 N	16 W	640.00	25	8 00
All	3	7 N	17 W	398.52	19	4 98
All	5	"	"	391.80	25	4 90
N ½	9	"	"	320.00	25	4 00
N ½	11	"	"	320.00	25	4 00
All	5	7 N	18 W	370.40	25	4 63
N ½	7	"	"	321.29	25	4 02
N ½	9	"	"	320.00	25	4 00

Continued.

PACIFIC RAILROAD COMPANY.

San Francisco, Cal., December 8, 1894.

case 600—U. S. *vs.* S. P. R. R. Co.—
pany, lands patented, fees paid, etc.

INDEMNITY LIMITS.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
Oct. 7, 1887	1 80	Oct. 4, 1887				
" " "	7 20	" " "				
" " "	19 80	" " "				
" " "	28 11	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" 3, 1887	13 68	Sept. 29, 1887				
" " "	14 40	" " "				
June 12, 1885	7 20	June 8, 1885				
Oct. 3, 1887	14 40	Sept. 29, 1887				
June 12, 1885	14 40	June 8, 1885				
Oct. 3, 1887	28 80	Sept. 29,1887				
" " "	28 80	" " "				
" " "	27 66	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	14 40	" " "				
" " "	28 80	" " "				
July 19, 1884	3 60	July 9, 1884			10	Jan. 9, 1885
	3 60	Sept. 29, 1887				
Oct. 3, 1887	28 80	" " "				
Feb. 1, 1886	17 93	Jan. 19, 1886				
Oct. 3, 1887	17 63	Sept. 29, 1887				
" " "	14 40	" " "				
" " "	14 40	" " "				
" " "	16 67	" " "				
" " "	14 46	" " "				
" " "	14 40	" " "				

Continued.

Account Continued.

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
All	1	7 N	19 W	370.36	25	$4 63
All	3	"	"	370.08	25	4 63
N ½	11	"	"	320.00	25	4 00
W ½ of E ½; W ½	7	8 N	15 W	468.16	7	5 85
W ½ of E ½ and W ½	19	"	"	471.42	7	5 89
All	31	"	"	636.70	7	7 96
All	1	8 N	16 W	640.00	19	8 00
All	3	"	"	640.00	19	8 00
All	5	"	"	640.00	19	8 00
All	7	"	"	642.08	18	8 03
All	9	"	"	640.00	19	8 00
All	11	"	"	640.00	19	8 00
All	13	"	"	640.00	19	8 00
All	15	"	"	640.00	19	8 00
All	17	"	"	640.00	19	8 00
All	21	"	"	640.00	19	8 00
All	23	"	"	640.00	19	8 00
All	25	"	"	640.00	19	8 00
NW ¼	29	"	"	160.00	19	2 00
All	1	8 N	17 W	640.00	7	8 00
All	3	"	"	640.00	7	8 00
E ½; E ½ of W ½	9	"	"	456.00	7	5 70
All	11	"	"	640.00	7	8 00
N ½	13	"	"	320.00	7	4 00
N ½	15	"	"	320.00	7	4 00
All	19	"	"	238.26	7	2 98
E ½ of SW ¼; SE ¼	25	"	"	240.00	26	Rejected
Lot 1	27	"	"	8.25	7	10
All	29	"	"	458.49	7	5 73
All	31	"	"	640.48	7	8 01
All	33	"	"	640.00	7	8 00
All	35	"	"	375.04	7	4 69
N ½ of SE ¼; SE ¼ of SE ¼	7	8 N	18 W	120.00	25	1 50
All	9	"	"	638.61	25	7 98
Lot 1	11	"	"	19.76	25	24
Carried forward				30,139.50		$372 74

Account Continued.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
Oct, 3 , 1887	$16 67	Sept. 9, 1887				
" " "	16 65	" " "				
" " "	14 40	" " "				
Jan. 16, 1885	21 07	Nov. 25, 1884				
" " "	21 21	" " "				
" " "	28 65	" " "				
Feb. 1, 1886	28 80	Jan. 19, 1886				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 89	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	7 20	" " "				
Jan. 16, 1885	28 80	Nov. 25, 1884				
" " "	28 80	" " "				
" " "	20 52	" " "				
" " "	28 80	" " "				
" " "	14 40	" " "				
" " "	14 40	" " "				
" " "	10 72	" " "				
	10 80	Sept. 29, 1887				
Jan. 16, 1885	37	Nov. 25, 1884				
" " "	20 63	" " "				
" " "	28 82	" " "				
" " "	28 80	" " "				
" " "	16 88	" " "				
Oct. 3, 1887	5 40	Sept. 29, 1887				
" " "	28 74	" " "				
" " "	89	" " "				
	$1,356 25					

S. P. R. R. BRANCH LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
Brought forward.....				30,139.50		$372 74
Lots 1, 2, 3, and SW ¼ of SW ¼.....	13	8 N	18 W	98.64	25	1 23
N ½ of NE ¼; SW ¼ of NW ¼; SE ¼ of SE ¼; W ½ of SE ¼; SW ¼.....	17	"	"	400.00	25	5 00
All.....	19	"	"	641.48	25	8 02
All.....	21	"	"	640.00	25	8 00
All.....	23	"	"	640.00	25	8 00
All.....	25	"	"	640.00	25	8 00
All.....	27	"	"	640.00	25	8 00
All.....	33	"	"	638.92	25	7 99
SW ¼; E ½	23	8 N	19 W	480.00	25	6 00
NE ¼; S ½.....	27	"	"	480.00	25	6 00
All.....	35	"	"	640.00	25	8 00
W ½.....	31	9 N	15 W	308.00	7	3 85
All.....	14	9 N	16 W	643.22	19	8 04
All.....	21	"	"	640.00	19	8 00
W ½ of NE ¼; NW ¼ of SE ¼; S ½ of SE ¼; W ½	25	"	"	520.00	19	6 50
All.....	27	"	"	640.00	19	8 00
All.....	29	"	"	640.00	19	8 00
All.....	31	"	"	641.94	19	8 02
All.....	33	"	"	640.00	19	8 00
All.....	35	"	"	640.00	19	8 00
All.....	25	9 N	17 W	640.00	7	8 00
S ½.....	27	"	"	320.00	7	4 00
All.....	33		"	456.00	7	5 70
All.....	35	"	"	640.00	7	8 00
All.....	7	3 N	3 W	637.64	26	Rejected
N ½	19	"	"	320.00	26	"
All.....	1	3 N	4 W	644.74	25	8 06
All.....	3	"	"	641.88	25	8 02
All.....	5	"	"	632.68	25	7 91
N ½	7	"	"	312.77	25	3 91
N ½ of SE ¼; N ½	9	"	"	400.00	25	5 00
All.....	11	"	"	640.00	25	8 00
NW ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼.....	13	"	"	160.00	25	2 00

Continued.

INDEMNITY LIMITS.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
	$1,356 25					
Oct. 3, 1887	4 44	Sept. 29, 1887				
" " "	18 00	" " "				
" " "	28 89	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 75	" " "				
" " "	21 60	" " "				
" " "	21 60	" " "				
" " "	28 80	" " "				
Jan. 16, 1885	13 86	Nov. 25, 1884				
Feb. 1, 1886	28 94	Jan. 19, 1886				
" " "	28 80	" " "				
" " "	23 40	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 89	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
Jan. 16, 1885	28 80	Nov. 25, 1884				
" " "	14 40	" " "				
" " "	20 52	" " "				
" " "	28 80	" " "				
	28 69	Sept. 29, 1887				
	14 40	" " "				
Oct. 3, 1887	29 01	" " "				
" " "	28 88	" " "				
" " "	28 47	" " "				
" " "	14 07	" " "				
" " "	18 00	" " "				
" " "	28 80	" " "				
" " "	7 20	" " "				

Continued.

Account Continued.

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
W ½ of NE ¼	5	3 N	19 W	79.85	5	$1 00
Lots 3 and 5; SE ¼ of NW ¼; W ½ of SE ¼; SW ¼	5	"	"	359.58	25	4 59
NE ¼; S ½	7	"	"	482.02	26	Rejected
NW ¼	7	"	"	161.28	5	2 02
All	17	"	"	638.93	26	Rejected
NE ¼	3	3 N	20 W	153.43	20	1 92
Lots 3 and 9; S ½ of NW ¼; N ½ of SW ¼	3	"	"	238.95	25	2 99
Lot 4	3	"	"	36.60	5	46
Lots 1, 2, 3 in N ½; Lots 1 and 2 in SE ¼; S ½ of SE ¼	5	"	"	234.56	5	2 93
Lots 6 and 7	7	"	"	56.38	5	70
S ½ of S ½	7	"	"	160.00	26	Rejected
Lots 2 and 3	9	"	"	36.94	5	46
SE ¼ of NE ¼; N ½ of SE ¼ NE ¼ of SW ¼	11	"	"	160.00	20	2 00
Lot 2; NW ¼ of SW ¼; S ½ of S ½	11	"	"	217.55	25	2 72
All	13	"	"	640.00	25	8 00
All	15	"	"	640.00	25	8 00
All	17	"	"	639.37	25	7 99
E ½	21	"	"	320.00	25	4 00
W ½	21	"	"	320.00	26	Rejected
All	23	"	"	640.00	25	8 00
Lots 1, 2, 3, 4	25	"	"	43.56	25	54
Lots 1, 2, 3, 4; N ½ of N ½	27	"	"	217.80	25	2 72
All	29	"	"	377.80	26	Rejected
Carried forward				54,692.01		$643 03

Account Continued.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
May 25, 1883	$ 3 60	May 15, 1883				
Oct. 3, 1887	16 18	Sept. 29, 1887				
	21 60	" " "				
May 25, 1883	7 26	May 15, 1883				
	28 80	Sept. 29, 1887				
Feb. 14, 1887	6 90	Jan. 15, 1887				
Oct. 3, 1887	10 75	Sept. 29, 1887				
May 25, 1883	1 65	May 15, 1883				
" " "	10 56	" " "				
" " "	2 54	" " "				
	7 20	Sept. 29, 1887				
May 25, 1883	1 66	May 15, 1883				
Feb. 14, 1887	7 20	Jan. 15, 1887				
Oct. 3, 1887	9 79	Sept. 29, 1887				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 77	" " "				
" " "	14 40	" " "				
	14 40	Sept. 29, 1887				
Oct. 3, 1887	28 80	" " "				
" " "	1 96	" " "				
" " "	9 80	" " "				
	17 00	Sept. 29, 1887				
	$2,461 08					

S. P. R. R. BRANCH LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
Brought forward.....				54,692.01		$643 03
NE ¼ of NW ¼; NW ¼ of NW ¼.....	1	3 N	21 W	80.00	26	Rejected
SW ¼ of NW ¼; SW ¼ of NE ¼; NW ¼ of SE ¼.....	1	"	"	120.00	25	1 50
Lots 1 and 2.....	3	"	"	36.79	25	46
N ½ of NE ¼; Lots 1, 2, 3, 4 .	11	"	"	179.66	25	2 25
All.....	13	"	"	640.00	25	8 00
Lot 1.....	15	"	"	14.32	25	18
All.....	23	"	"	640.00	25	8 00
All.....	25	"	"	596.40	25	7 46
Lots 1, 2, 3, 4; NW ¼ of NE ¼; E ½ of NW ¼.....	35	"	"	205.85	25	2 57
S ½ of N ½ and S ½.....	7	4 N	1 W	480.06	25	6 00
All.....	17	"	"	640.00	25	8 00
All.....	19	"	"	629.60	28	7 87
All.....	21	"	"	640.00	25	8 00
S ½ of S ½	1	4 N	2 W	160.00	25	2 00
SW ¼.....	3	"	"	160.00	25	2 00
All.....	5	"	"	639.84	25	8 00
All.....	7	"	"	613.16	25	7 66
All.....	9	"	"	640.00	25	8 00
All.....	11	"	"	640.00	25	8 00
All.....	13	"	"	640.00	25	8 00
All.....	15	"	"	640.00	25	8 00
All.....	17	"	"	640.00	25	8 00
All.....	19	"	"	618.92	25	7 74
All.....	21	"	"	640.00	25	8 00
All.....	23	"	"	640.00	25	8 00
All.....	1	4 N	3 W	640.06	25	8 00
All.....	3	"	"	637.80	25	7 97
All.....	5	"	"	637.64	26	Rejected
All.....	7	"	"	615.24	26	"
All.....	9	"	"	640.00	26	"
All.....	11	"	"	640.00	25	8 00
All.....	13	"	"	640.00	25	8 00
All.....	15	"	"	640.00	26	Rejected
All.....	17	"	"	640.00	25	8 00

Continued.

INDEMNITY LIMITS.

Receiv-Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
	$2,461 08					
	3 60	Sept. 29, 1887				
Oct. 3, 1887	5 40	" " "				
" " "	1 66	" " "				
" " "	8 08	" " "				
" " "	28 80	" " "				
" " "	64	" " "				
" " "	28 80	" " "				
" " "	26 84	" " "				
" " "	9 26	" " "				
" " "	21 60	" " "				
" " "	28 80	" " "				
Oct. 7, 1887	28 33	Oct. 4, 1887				
Oct. 3, 1887	28 80	Sept. 29, 1887				
" " "	7 20	" " "				
" " "	7 20	" " "				
" " "	28 79	" " "				
" " "	27 59	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 80	" " "				
" " "	28 50	" " "				
" " "	27 85	" " "				
" " "	28 80	" " "				
" " "	23 80	" " "				
" " "	28 80	" " "				
" " "	28 70	" " "				
	28 69	Sept. 29, 1887				
	27 69	" " "				
	28 80	" " "				
Oct. 3, 1887	28 80	" " "				
" " "	28 80	" " "				
	28 80	Sept. 29, 1887				
Oct. 3, 1887	28 80	" " "				

Continued.

Account Continued.

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
All	19	4 N	3 W	619.09	25	$7 74
All	21	"	"	640.00	25	8 00
All	29	"	"	640.00	28	8 00
All	31	"	"	627.44	25	7 84
W ½ of E ½ and W ½	5	4 N	19 W	539.49	25	6 74
All	7	"	"	635.41	25	7 94
W ½ of E ½	17	"	"	160.00	5	2 00
W ½	17	"	"	320.00	25	4 00
All	19	"	"	562.18	5	7 02
E ½ of NW ¼; W ½ of NE ¼; Lots 1, 2, 3, 4	29	"	"	266.78	5	3 33
Lots 1, 2, 3, 4; S ½ of NE ¼; E ½ of N W ¼	31	"	"	302.06	25	3 78
All	1	4 N	20 W	756.84	25	9 46
All	11	"	"	640.00	25	8 00
Lots 1, 2, 3, 4, 5	13	"	"	188.57	25	2 36
Lot 6	13	"	"	3.40	26	Rejected
SE ¼	15	4 N	20 W	160.00	5	2 00
SW ¼ and N ½	15	"	"	480.00	26	Rejected
All	19	"	"	631.42	25	7 89
All	21	"	"	611.16	25	7 64
All	23	"	"	409.23	5	5 12
Lots 1, 2, 3, 4, 5; SW ¼ of NW ¼	25	"	"	131.43	5	1 64
All	27	"	"	421.02	5	5 26
All	29	"	"	640.00	5	8 00
E ½	31	"	"	320.00	25	4 00
W ½	31	"	"	310.94	5	3 89
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9; NE ¼ of NW ¼	33	"	"	277.06	5	3 46
Carried forward				83,290.87		$961 80

Account Continued.

Receiv- Fees. Date Paid.[1]	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
Oct. 3, 1887	$27 86	Sept. 29, 1887				
" " "	28 80	" " "				
Oct. 7, 1887	28 80	Oct. 4, 1887				
Oct. 3, 1887	28 23	Sept. 29, 1887				
" " "	24 28	" " "				
" " "	28 59	" " "				
May 25, 1883	7 20	May 15, 1883				
Oct. 3, 1887	14 40	Sept. 29, 1887				
May 25, 1883	25 30	May 15, 1883				
" " "	12 01	" " "				
Oct. 3, 1887	13 59	Sept. 29, 1887				
" " "	34 06	" " "				
" " "	28 80	" " "				
" " "	8 49	" " "				
	15	Sept. 29, 1887				
May 25, 1883	7 20	May 15, 1883				
	21 60	Sept. 29, 1887				
Oct. 3, 1887	28 41	" " "				
" " "	27 50	" " "				
May 25, 1883	18 42	May 15, 1883				
" " "	5 91	" " "				
" " "	18 95	" " "				
" " "	28 80	" " "				
Oct. 3, 1887	14 40	Sept. 29, 1887				
May 25, 1883	13 99	May 15, 1883				
" " "	12 47	" " "				
	$3,748 01					

S. P. R. R. BRANCH LINE,

Part of Section.	Sec.	Tp.	Rge.	Acres.	List.	Register & er's Amount.
Brought forward.....				83,290.87		$961 80
Lots 1, 2, 3, 4, 5, 8, 9, 10; NW ¼ of NE ¼; NE ¼ of SE ¼; Lot 7; SE ¼ of NW ¼; NE ¼ of SW ¼	35	4 N	20 W	392.41	5	4 91
Lot 6; SW ¼ of SE ¼; S ½ of SW ¼	35	"	"	154.86	25	1 94
S ½.....	13	4 N	21 W	320.00	25	
S ½ (Re-selection)	13	"	"		26	Rejected
E ½ of E ½.....	15	"	"	160.00	25	2 00
All.....	23	"	"	640.00	25	8 00
NW ¼; E ½..... ..	25	"	"	480.00	25	6 00
E ½	27	"	"	320.00	25	4 00
All.....	35	"	"	640.00	25	8 00
All.....	1	6 N	20 W	638.92	25	7 99
All.....	11	"	"	640.00	25	8 00
All.....	21	"	"	640.00	25	8 00
All.....	27	"	"	640.00	25	8 00
Total.....				88,957.06		$1,028 64

INDEMNITY LIMITS.

Receiv- Fees. Date Paid.	Surveying Fees. Amount.	Surveying Fees. Date Paid.	Conveying Fees. Amount.	Conveying Fees. Date Paid.	Patent. No.	Patent. Date.
	$3,748 01					
May 25, 1883	17 66	May 15, 1883				
Oct. 3, 1887	6 97	Sept. 29, 1887				
	14 40	"	"	"		
Oct. 3, 1887	7 20	"	"	"		
" " "	28 80	"	"	"		
" " "	21 60	"	"	"		
" " "	14 40	"	"	"		
" " "	28 80	"	"	"		
" " "	28 75	"	"	"		
" " "	28 80	"	"	"		
" " "	28 80	"	"	"		
" " "	28 80	"	"	"		
	$4,002 99					

RECAPIT

Main or Branch Line.	Limits.	Patented or Unpatented.
Main	Granted	Patented
"	"	Unpatented
"	Indemnity	Patented
"	"	Unpatented
Branch	Granted	Patented
"	"	Unpatented
"	Indemnity	Patented
"	"	Unpatented

Total.....

NOTE:—Where dates of payment of surveying fees
the fees were paid by Henry Beard in
fees were paid on lands patented prior

NOTE:—Matter printed in

ULATION.

Acres.	Register and Receiver's Fees.	Surveying Fees.	Conveying Fees.
12,338.77	$ 154 24	$ 555 24	
137,744.51	1,721 89	4,262 06	
000.00	000 00	000 00	
000.00	000 00	000 00	
150,083.28	*1,876 13*	*4,817 30*	
29,902.11	372 63	1,172 47	
36,279.31	443 97	1,609 08	
80.00	1 00	3 60	
88,877.06	1,027 64	3,999 39	
155,038.48	*1,845 24*	*6,784 54*	
305,121.76	$3,721 37	$11,601 84	

are omitted from the foregoing statement
Washington, D. C., except that no surveying
to July 3, 1876.

italics is red in original

[Endorsed]: Statement of fees paid on lands in case 600 that have been selected by Southern Pacific Railroad Company. See letter, December 8, 1894, to Wm. Singer, Jr. Defendants' Exhibit No. 164. Stephen Potter, special examiner. Filed February 10, 1896. Wm. M. Van Dyke, Clerk.

Lead pencil endorsement:—"Defendants' Exhibit No. 164. Stephen Potter, special examiner.")

Defendant's Exhibit No. 178.

Copy of Resolution of the Board of Directors of the Southern Pacific Railroad Company.

Resolved, that this company will and does hereby accept the terms, conditions and impositions of the act of Congress of the United States, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes," approved March 3, 1871, and that a copy of this resolution of acceptance, certified under the seal of this company be forwarded to and filed with the secretary of the interior.

I, J. L. Willcutt, secretary of the Southern Pacific Railroad Company, hereby certify that the foregoing is a true and correct copy of a resolution adopted at a meeting of the board of directors of the Southern Pacific Railroad Company, held at the office of the company, in the city and county of San Francisco, State of California, on the sixteenth day of May, 1871, as the same appears on the records of said company.

Witness my hand and the corporate seal of said company, the sixth day of July, 1895.

J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

[Seal]

I certify that I have compared the foregoing document with the original thereof on the records of the Southern Pacific Railroad Company, in their possession, and find the same to be a full, true and correct copy of same.

San Francisco, July 16, 1895.

STEPHEN POTTER,
Special Examiner.

[Endorsed]: Defendants' Exhibit No. 178. Stephen Potter, special examiner. Filed February 10, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 179.

PATENT NO. 22.

SOUTHERN PACIFIC RAILROAD

LANDS,

PRIMARY LIMITS.

LOS ANGELES, INDEPENDENCE, SAN FRANCISCO

AND VISALIA LAND DISTRICTS.

CALIFORNIA.

[Stamped]: Land Dept. S. P. R. R. Co.
Received July 23, 1894.

The United States of America, to all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved July 27, 1866, and joint resolution of June 28, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and to secure to the government the use of the same for postal, military, and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line under certain conditions and stipulations expressed in said act, from the city of San Francisco, to a point of connection with the Atlantic & Pacific Railroad near the boundary line of said State, and provision is made for granting to the said company, "every alternate section of public land designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of twenty miles on each side of said road" "not sold, reserved, or otherwise disposed of by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

And whereas, official statements from the secretary of the interior have been filed in the general land office, showing that the commissioners appointed by the President, under the provisions of the fourth section of the said act of July 27, 1866, have reported to him, that the

line of said railroad and telegraph, from San Jose to Tres Pinos and from Alcalde to Mojave, together comprising two hundred and fifty-two miles and four hundred and seventy-nine thousandths of a mile has been constructed and fully completed and equipped in the manner prescribed by said act of July 27, 1866, and accepted by the President.

And whereas, the following tracts have been duly listed under the act aforesaid, by the duly authorized land agent of the said Southern Pacific Railroad Company, as shown by his original lists of selections, approved by the local officers and on file in this office.

And whereas, the said tracts of land lie coterminous to the constructed line of said road and are particularly described as follows, towit:

North of base line and west of San Bernardino meridian, State of California.

Township Nine, Range Fifteen.

The fractional west half of the northwest quarter and the fractional west half of the southwest quarter of section nineteen, containing one hundred and fifty-five acres and eighty-four hundredths of an acre.

Township Nine, Range Sixteen.

All of section thirteen, containing six hundred and forty acres.

Township Nine, Range Thirteen.

The north half of the southeast quarter, the northeast quarter and the west half of section seven, containing five

hundred and seventy-two acres and four-hundredths of an acre. The west half of the northwest quarter of section nine, containing eighty acres. The west half of the northeast quarter, the northwest quarter of the southeast quarter, and the west half of section seventeen, containing four hundred and forty acres. All of section nineteen, containing six hundred and fifty-one acres and thirty-eight hundredths of an acre. The north half of the northwest quarter, the southwest quarter of the northwest quarter, and the northwest quarter of the southwest quarter of section thirty-one, containing one hundred and seventy-one acres and one-hundredth of an acre.

Township Nine, Range Fourteen.

All of section nineteen, containing six hundred and thirty-seven acres and twenty-two hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. All of section twenty-five, containing six hundred and forty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. All of section thirty-one, containing six hundred and thirty-one acres and twenty-eight hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

Township Nine, Range Fifteen.

All of section seventeen, containing six hundred and forty acres. The east half of the northwest quarter, the east half of the southwest quarter, and the east half of section nineteen, containing four hundred and eighty acres. The south half of section twenty-one, containing three hundred and twenty acres. All of section twenty-three, containing six hundred and forty acres. All of section twenty-five, containing six hundred and forty acres. The south half of the southwest quarter, the southeast quarter and the north half of section twenty-seven, containing five hundred and sixty acres. The north half of the northwest quarter, and the northeast quarter of section thirty-five, containing two hundred and forty acres.

Township Nine, Range Sixteen.

The northeast quarter of the southeast quarter and the north half of section twenty-three, containing three hundred and sixty acres.

Now, know ye, that the United States of America, in consideration of the premises and pursuant to the said acts of Congress, have given and granted, and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing, yet excluding and excepting "all mineral lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute shall not be construed to include "coal and iron lands."

To have and to hold the same with the appurtenances unto the said "Southern Pacific Railroad Company," and to its successors and assigns forever.

In testimony whereof, I, Grover Cleveland, President of the United States, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington, this tenth day of July, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and nineteenth.

By the President, GROVER CLEVELAND,

M. McKean,

Secretary.

[Seal of the United States General Land Office]

L. Q. C. Lamar,

Recorder of the General Land Office.

Recorded in vol. 14, pp. 103 to 142, inclusive.

[Endorsed]: Recorded at the request of W. F. & Co., Feb. 27, A. D. 1895, at 2 minutes past 9 o'clock, A. M., in vol. P of patents, pages 182 to 232, Tulare County Records, Ira Christman, recorder. By Geo. D. Smith, Deputy recorder. Fees, $32.70.

Recorded at the request of Wells, Fargo & Co., March 23, A. D. 1895, at 15 minutes past 9 o'clock, A. M., in vol. 1 of patents, page 78 et seq., Kings County records. F. J. Peacock, recorder. By ———, Deputy Recorder. $32.90.

Recorded at the request of Wells, Fargo & Co., February 8, A. D. 1895, at 20 minutes past 11 A. M., in vol.

"F." of patents, page 128, Records of Monterey County, California. W. H. Pyburn, County Recorder. By P. W. Soto, Deputy. Recorder's fees, $22.50.

Filed for record at the request of Wells, Fargo & Co., 16 Feb., A. D. 1895, at 27 minutes past 8 o'clock, A. M., and recorded in vol. "P" of patents, page 288 et seq., Fresno county records. W. W. Meacham, Recorder. By ———, Deputy Recorder. 160 fol. $16.30.

State of California,
County of Kern. } ss.

This certifies that the within instrument was received for record and duly recorded in Kern county records at request of Wells, Fargo & Co., in book 10 of patents, pages 4 to 50, this nineteenth day of Jan., 1895, at 40 minutes past 10 o'clock, A. M. F. S. Benson, County Recorder. ———, Deputy. Fees, $22.90.

Recorded at request of Wells, Fargo & Co., in book F of patents, page 205 et seq., Jan. 31, 1895, at 10 minutes past 9 o'clock, A. M., Records of Santa Clara County, Cal. Chas. P. Owen, County Recorder. By J. D. Canelo, Deputy. $23.50.

Marked "Defendants' Exhibit No. 170. Stephen Potter, special examiner."

I certify that I have compared the foregoing document with the original patent now in the possession of the Southern Pacific Railroad Company, and marked by me "Defendants' Exhibit No. 179," in the case of the United States of America, complainant, vs. Southern Pacific

Railroad Company et al., defendants, No. 600, and find it to be a full, true, and correct copy thereof, so far as it covers the lands involved in said suit.

San Francisco, July 15, 1895.

STEPHEN POTTER,
Special Examiner.

[Endorsed]: Filed Feb. 10, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 180.

PATENT NO. 1.

(Branch Line.)

SOUTHERN PACIFIC RAILROAD

COMPANY

OF

CALIFORNIA.

[Stamped]: Received April 14, 1876.
Answered ———.

The United States of America, to all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved July 27, 1866, and "joint resolution" of June 28, 1870 "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas, to the Pacific Coast, and to secure to the government the use of the same for postal, military, and other purposes," authority is given

to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line under certain conditions and stipulations expressed in said act from the city of San Francisco to a point of connection with the Atlantic & Pacific Railroad near the boundary line of said State, and provision is made for granting to the said company "every alternate section of public land designnated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad on the line thereof, and within the limits of twenty miles on each side of said road not sold, reserved, or otherwise disposed of by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

And whereas, it is further provided by said act that "whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, or occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof under the direction of the secretary of the interior in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not included in the reserved numbers."

And whereas, it is further enacted by the twenty-third section of the act of March 3, 1871, "for the purpose of connecting the 'Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is authorized to construct a line of railroad

from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the aforesaid" act of July 27, 1866.

And whereas, official statements bearing dates May 11, 1874, and November 13, 1875, from the secretary of the interior, have been filed in the general land office, showing that the commissioners appointed by the President under the provisions of the fourth section of said act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph, from a point in the northwest quarter of section three (3), township two (2) north, range fifteen (15) west, San Bernardino meridian, to a point in the southwest quarter of section four (4), township three (3) south, range one (1) west, at San Gargonio Pass, making one hundred miles of road constructed and fully completed and equipped in the manner prescribed by the said act of July 27, 1866.

And whereas, it is further shown that copies of the reports of said commissioners, have been filed in the department of the interior, with copies of the order of the President of the United States, dated May 9, 1874, and November 8, 1875, of the completion of the above portion of said railroad and telegraph line.

And whereas, certain tracts have been selected under the said act of March 3, 1871, by Benjamin B. Redding, land agent of the said Southern Pacific Railroad Company

as shown by his original lists of selections, dated January 20, 1876, and certified January 28, 1876, by the register and receiver at Los Angeles, California. The said tracts being described as follows, towit:
North of base line and west of San Bernardino meridian.

Los Angeles district.

Township one, range eight.

Southeast quarter of section nineteen containing one hundred and sixty acres.

Township one, range eleven.

East half of southwest quarter of section thirteen, containing eighty acres. Lots numbered one, two, three, east half of northeast quarter, northeast quarter of northwest quarter, west half of northwest quarter, east half of southeast quarter, northwest quarter of southeast quarter, and northwest quarter of southwest quarter of section fifteen, containing four hundred and thirty-one acres, and twelve hundredths of an acre. Lots numbered three and four, north half of southeast quarter, south half of northeast quarter and southeast quarter of northwest quarter of section seventeen, containing two hundred and twenty-eight acres and seventy-seven hundredths of an acre. Lots numbered one, three, four, northwest quarter of northeast quarter, and southwest quarter of northwest quarter of section twenty-three, containing one hundred and sixty-two acres, and eleven hundredths of an acre.

Township one, range eleven.

Lot numbered one of section one, containing fourteen acres, and ninety-seven hundredths of an acre. Northeast quarter, east half of northwest quarter, lots numbered one, two, three, four, five, six and north half of southwest quarter of section thirteen, containing four hundred and eighty-one acres, and fifty-four hundredths of an acre.

Township one, range twelve.

Lots numbered one, and five of section three, containing nineteen acres, and seventy-six hundredths of an acre. Northeast quarter of southwest quarter of section seven, containing forty acres. Southeast quarter of northwest quarter, northeast quarter of southwest quarter and lot numbered two, of section eleven, containing eighty-three acres, and fifty hundredths of an acre. Northeast quarter of section fifteen, containing one hundred and sixty acres. Northeast quarter and east half of southeast quarter of section seventeen, containing two hundred and forty acres. North half of southeast quarter of section nineteen, containing eighty acres. East half of northeast quarter, east half of southeast quarter, and northwest quarter of section thirty-one, containing three hundred and twenty-seven acres, and sixty-one hundredths of an acre.

Township one, range thirteen.

Lot numbered one, of section eleven, containing nineteen hundredths of an acre. Northeast quarter of north-

east quarter, southeast quarter of southeast quarter, lot numbered one, of northeast quarter, and lot numbered four, of southeast quarter of section thirteen, containing ninety-nine acres, and twenty-eight hundredths of an acre.

Township one, range fourteen.

East half of southeast quarter, and lots numbered one, and two, of section three, containing one hundred and twenty-four acres, and fifty-three hundredths of an acre. North half of southeast quarter, southwest quarter of *of* southeast quarter, and lot numbered three of section seven, containing one hundred and fifty-three acres, and thirty-three hundredths of an acre. Southeast quarter, and northwest quarter of northwest quarter of section eleven, containing two hundred acres.

Township two, range eleven.

Lot numbered one, of section three containing twenty-one acres, and thirty-five hundredths of an acre. Northeast quarter of southeast quarter, and south half of southeast quarter of section nine, containing one hundred and twenty acres.

Township two, range thirteen.

Lots numbered one, and two, of section three, containing four acres. Lot numbered one, of section five, containing two acres.

Township two, range fourteen.

Southwest quarter of section thirteen, containing one

hundred and sixty acres. Lots numbered one, two, three, four, five, six, seven, eight, nine and ten, east half of southeast quarter, and south half of southwest quarter of section seventeen, containing three hundred and ninety-two acres, and fifty-nine hundredths of an acre.

Now know ye that the United States of America, in consideration of the premises, and pursuant to the said acts of Congress have given and granted, and by these presents, do give and grant, unto the said Southern Pacific Railroad Company, of California, and to its successors and assigns, the tracts of land, above described, mineral land excepted.

To have and to hold, the same together with all rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific Railroad Company of California and to its successors and assigns forever.

In testimony whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the general land office, to be hereunto affixed.

Given under my hand at the city of Washington this twenty-ninth day of March in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States, the one hundredth.

By the President:

U. S. GRANT.

By D. D. Cone,

Secretary.

C. W. HOLCOMB,

Recorder of the general land office.

[Seal of the United States general land office.]

Recorded in vol. 5, pages 409 to 417 in.

[Endorsed]: Recorded at request of Jerome Madden, land agent of the Southern Pacific Railroad Company, December 13, 1880, at 20 min. past 11, A. M. in Book 2 of Patents on page 563, et seq., in the recorder's office of Los Angeles county, Cal.

Fees, $8.70.

CHARLES C. LAMB,
County recorder.
By C. H. Dunsmoor,
Deputy.

Recorded at the request of Wells, Fargo & Co., March 25,1881, at 45 minutes past 10 o'clock, A. M. in Book A of Patents on page 444, et seq., records of San Bernardino county, Cal.

Fees, $8.75.

A. F. McKENNEY,
Co. Recorder.
By S. M. Wall,
Deputy.

Marked, "Defendants' Exhibit No. 180, Stephen Potter, special examiner."

I certify that I have compared the foregoing document with the original patent now in the possession of the Southern Pacific Railroad Company, and marked by me, "Defendants' Exhibit No. 180," in the case of the United

States of America, complainant, vs. Southern Pacific Railroad Company et al., defendants, No. 600, and find it to be a full, true, and correct copy thereof, so far as it covers the lands involved in said suit.

San Francisco, July 13, 1895.

STEPHEN POTTER,
Special examiner.

[Endorsed]: Filed Feb. 10, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 181.

PATENT NO. 2

OF THE

BRANCH LINE

OF THE

SOUTHERN PACIFIC RAILROAD

COMPANY

[Stamped]
Received April 17, 1879.
Answered ————.

The United States of America, to all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved July 27, 1866, and "joint resolution" of June 28, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas, to the Pacific Coast,

and to secure to the government the use of the same for postal, military, and other purposes," authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line under certain conditions and stipulations expressed in said act from the city of San Francisco to a point of connection with the Atlantic & Pacific Railroad near the boundary line of said State, and provision is made for granting to the said company "every alternate section of public land designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad on the line thereof, and within the limits of twenty miles on each side of said road not sold, reserved, or otherwise disposed of by the United States and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

And whereas, it is further enacted by the twenty-third section of the act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is authorized to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California, by the aforesaid act of July 27, 1866."

And whereas, official statements bearing dates May 11,

1874, November 13, 1875, July 22, 1876, March 3, 1877, and January 30, 1878, from the secretary of the interior, have been filed in the general land office, showing that the commissioners appointed by the President under the provisions of the fourth section of the said act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph from the town of Mojave, in township eleven north, of range twelve west, San Bernardino base and meridian, and thence to the Fort Yuma reservation, in the southeast quarter of section twenty-six, township sixteen south, range twenty-two east, same base and meridian, making three hundred and forty-six miles and ninety-six hundredths of a mile of road constructed and fully completed and equipped in the manner prescribed by the said act of July 27, 1866.

And whereas it is further shown that copies of the reports of said commissioners have been filed in the department of the interior, with copies of the order of the President of the United States, dated May 9, 1874, November 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878, on the completion of the above portion of said railroad and telegraph line.

And whereas certain tracts have been selected under the said act of March 3, 1871, by Jerome Madden, land agent of the said Southern Pacific Railroad Company, as shown by his original list of selections dated June 27, 1877, and certified July 2, 1877, by the register and receiver at Los Angeles, California. The said tracts being described as follows, towit:

North of base line and west of the San Bernardino meridian, California.

Township One, Range Eight.

The northwest quarter of section thirteen, containing one hundred and sixty acres. The south half of section twenty-one, containing three hundred and twenty acres. The north half of section twenty-three, containing three hundred and twenty acres. The lots numbered one, two, and three of section twenty-five, containing sixty-seven acres and fifty-one one-hundredths of an acre.

Township One, Range Twelve.

The lots numbered one and two of the northeast quarter, the lots numbered three, four, and five of the northwest quarter, and the northeast quarter of the southeast quarter and section three, containing two hundred and twenty acres and twenty-eight one-hundredths of an acre. The lots numbered one, two, three, four, five, six, seven, eight, and nine of section five, containing two hundred and sixty-four acres and forty-eight one-hundredths of an acre. The lots numbered one, two, three, four, and five of section eleven, containing one hundred and thirty-one acres and seventy-five one-hundredths of an acre. The lots numbered one, two, and four of section thirteen, containing seventy acres and twenty-six one-hundredths of an acre.

Township One, Range Fourteen.

All of section three, containing six hundred and nineteen acres and seventy-seven one-hundredths of an acre. The lots numbered one and two of section five, containing seven acres and thirty-nine one-hundredths of an acre.

All of section nine, containing five hundred and forty-two acres, and twenty-four one-hundredths of an acre. The lots numbered one, two, three, and four and the west half of the northwest quarter of section eleven, containing one hundred and thirty-four acres and twenty-four one-hundredths of an acre. The lot numbered one of section fifteen, containing two acres and ninety-two one hundredths of an acre.

South of the base line, and west of the San Bernardino meridian.

Township One, Range Six.

The northeast quarter of section five, containing one hundred and sixty-seven acres. The northwest quarter of section nine, containing one hundred and sixty acres.

Township One, Range Seven.

All of section twenty-one, containing six hundred and forty acres.

Township One, Range Eight.

All of section one, containing six hundred and forty acres and sixty-one hundredths of an acre. All of section eleven, containing six hundred and forty acres. The northeast quarter of the northeast quarter, the south half of the northeast quarter, the southeast quarter and the lots numbered one, two, three, and four of section fifteen, containing four hundred and sixteen acres. The lots numbered one and two of section twenty-one, containing thirty-two acres and ten one-hundredths of an acre. The north half of the northeast quarter of section

twenty-three, containing eighty acres. The lots numbered one, two, three, and four of section twenty-five, containing one hundred and thirty acres and thirty-four one-hundredths of an acre. The south half of the southeast quarter and the south half of the southwest quarter of section twenty-seven, containng one hundred and sixty acres. The lots numberd one and two of section thirty-three, containing fifty-eight acres and eighty-six one-hundredths of an acre. The lots numbered one, two, three and four of section thirty-five, containing thirty acres and twenty-six one-hundredths of an acre.

Township One, Range Eleven.

The lots numbered five, six, seven, and eight of section seven, containing forty-two acres and twenty-four one-hundredths of an acre.

Township One, Range Twelve.

The lots numbered two and three of section five, containing six acres and eighty-seven one-hundredths of an acre. The northeast quarter of section seven, containing one hundred and sixty acres. The fractional northeast quarter of the northeast quarter (or lot numbered one) and the northwest quarterof the northwest quarter of section eleven, containing seventy acres and ninety- one hundredths of an acre. The east half of the northeast quarter of section thirteen, containing eighty acres. The lot numbered one of the northwest quarter of section nineteen, containing forty-two acres and eighty-seven one-hundredths of an acre. The northwest quarter, the north

west quarter of the southwest quarter and the east half of section twenty-nine, containing five hundred and twenty acres.

Township One, Range Thirteen.

The lots numbered three and four in the southeast quarter of section twenty-five, containing eighteen acres and fifty-seven one-hundredths of an acre.

Township One, Range Fourteen.

The northwest quarter of section twenty-five, containing one hundred and sixty acres.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said acts of Congress, have given and granted, and by these presents, do give and grant, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns the tracts of land above described. "Mineral Land" excepted.

To have and to hold the same, together with all rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

In testimony whereof, I, Rutherford B. Hayes, President of the United States, have caused these letters to be made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington, this fourth day of April, in the year of our Lord one thousand

eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

By the President: R. B. HAYES.

By W. H. Crook,

Secretary.

[Seal of the United States General Office.]

S. W. Clark,

Recorder of the General Land Office.

Recorded in vol. 7, pages 86 to 97, inclusive.

[Endorsed]: Recorded at request of C. Cabot, Feb. 12, 1881, at 45 minutes past 3 P. M., in book 2 of Patents, page 574, records Los Angeles County, Chas. C. Lamb, County Recorder. By A. N. Hamilton, Deputy.

$12.70 paid.

Recorded at request of C. Cabot, Feb. 18, 1881, at 50 minutes past 10 o'clock, A. M., in book A of Patents, page 412 et seq. Records San Bernardino County, State of Cailfornia.

Fees, $12.75.

A. F. McKENNEY,

County Recorder.

By S. M. Wall,

Deputy.

Recorded at the request of C. Cabot, February 13, 1881, at 45 minutes past 9 o'clock, A. M., in book 2 of Patents, page 151, Records of San Diego County.

Fees, $12.75.

GILBERT DENNIE,

County Recorder.

Marked "Defendants' Exhibit No. 181, Stephen Potter, special examiner."

I certify that I have compared the foregoing document with the original patent now in the possession of the Southern Pacific Railroad Company, and marked by me "Defendants' Exhibit No. 181," in the case of the United States of America, complainant, vs. Southern Pacific Railroad Company et al., defendants, No. 600, and find it to be a full, true, and correct copy thereof, so far as it covers the lands involved in said suit.

San Francisco, July 13, 1895.

STEPHEN POTTER,
Special Examiner.

[Endorsed]: Filed Feb. 10, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 182.

PATENT NO. 4

OF

LANDS GRANTED BY THE ACT OF CONGRESS OF MARCH 3, 1871.

TO THE

SOUTHERN PACIFIC RAILROAD COMPANY

IN

CALIFORNIA.

[Stamped]: Land Dep't. S. P. R. R.
Received, July 25, 1882.
Answered, ———, 188—.
Book ——, page ——.

The United States of America, to all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved July 27, 1866, and joint resolution of June 28, 1870, to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and to secure to the government the use of the same for postal, military, and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line under certain conditions and stipulations expressed in said act from the city of San Francisco to a point of connection with the Atlantic & Pacific Railroad near the boundary line of said State, and provision is made for granting to the said company, "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims, at the time the line of said road is designated by a plat thereof filed in the office of the commissioner of the general land office."

And whereas, it is further enacted by the twenty-third section of the act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California," by the aforesaid act of July 27, 1866.

And whereas, official statements bearing dates May 11, 1874, November 13, 1875, July 22, 1876, March 3, 1877, and January 30, 1878, from the secretary of the interior, have been filed in the general land office, showing that the commissioners appointed by the President under the provisions of the fourth section of the said act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph from the town of Mojave, in township eleven north, range twelve west, San Bernardino base and meridian, and thence to the Fort Yuma reservation, in the southeast quarter of section twenty-six, township sixteen south, range twenty-two east, same base and meridian, making three hundred and forty-six miles and ninety-six one-hundredths of a mile of road has been constructed and fully completed and equipped in the manner prescribed by the said act of July 27, 1866.

And whereas it is further shown that copies of the reports of said commissioners have been filed in the depart-

ment of the interior with copies of the orders of the President of the United States, dated May 9, 1874, November 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878, on the completion of the above portion of said railroad and telegraph line.

And whereas certain tracts have been selected under the aforesaid act of March 3, 1871, by B. B. Redding, and Jerome Madden, the duly authorized land agents of the said Southern Pacific Railroad Company, as shown by their original lists of selections, dated January 20, 1876, June 27, 1877, and September 30, 1881, and certified January 28, 1876, July 2, 1877, and October 10, 1881, by the register and receiver at Los Angeles, California; the said tracts of land lie coterminous to the constructed line of road and are particularly described as follows, towit:

South of base line and west of San Bernardino meridian, California.

"Granted limits."

Township two, range fourteen.

The south half of the northeast quarter of section eleven, containing eighty acres.

Township one, range eleven.

The lot numbered one of the northwest quarter of section seven, containing forty acres.

Township one, range twelve.

The lots numbered three and four of the southwest quarter of section seven, containing eighty-three acres and sixteen one-hundredths of an acre.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said acts of Congress, have given and granted, and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing, yet excluding and excepting "all mineral lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute, shall not be construed to include "coal and iron lands."

To have and to hold the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

In testimony whereof, I, Chester A. Arthur, President of the United States, have caused these letters to be made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington, this twenty-sixth day of June, in the year of our Lord, one thousand eight hundred and eighty-two, and of the In-

dependence of the United States, the one hundred and sixth.

By the President,

CHESTER A. ARTHUR.

W. H. CROOK,

Secretary.

[Seal of the United States general land office.]

S. W. Clark,

Recorder of the general land office.

[Endorsed]: Recorded at request of Southern Pacific Railroad Company, January 11, 1883, at 11 min. past 10, A. M. in Book 3 Patents, page 191, records Los Angeles county, Chas. E. Miles, county recorder. By ————.

Recorded at request of Wells, Fargo & Co., Jan. 15, A. D. 1883, at 9:35 A. M., Book —— of Patents, pages 145, et seq. W. F. Holcomb, county recorder, San Bernardino Co., Cal. By E. A. Nisbet, deputy. $4.70 paid.

Marked, "Defendants' Exhibit No. 182, Stephen Potter, special examiner."

I certify that I have compared the foregoing document with the original patent now in the possession of the Southern Pacific Railroad Company, and marked by me "Defendants' Exhibit No. 182," in the case of the United States of America, complainant, vs. Southern Pacific Railroad Company et al., defendants, No. 600, and find it to be a full, true, and correct copy thereof, so far as it covers the lands involved in said suit.

San Francisco, July 15, 1895.

STEPHEN POTTER,

Special examiner.

[Endorsed]: Filed Feb. 10, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 183.

PATENT No. 6.

OF

LANDS GRANTED IN CALIFORNIA.

TO THE

SOUTHERN PACIFIC RAILROAD

COMPANY,

ACT, MARCH 3, 1871.

(Stamped) Land Dep't S. P. R. R.
Received, Jan. 22, 1884.
ANSWERED ———— 188—,
Book ———— Page ————

The United States of America, to all to whom these presents shall come, Greeting:

Whereas, by the act of Congress, approved July 27, 1866, and joint resolution of June 28, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and to secure to the government the use of the same for postal, military and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line under certain con-

ditions and stipulations expressed in said act from the city of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for granting to the said company, "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated and free from pre-emption or other claims, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office."

And whereas, it is further enacted by the twenty-third section of the act of March 3, 1871, " for the purpose of connecting The Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California," by the aforesaid act of July 27, 1866.

And whereas, official statements bearing dates May 11, 1874, November 13, 1875, July 22, 1876, March 3, 1877,

and January 30, 1878, from the secretary of the interior, have been filed in the general land office, showing that the commissioners appointed by the President under the provisions of the fourth section of the said act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph from the town of Mojave, in township eleven north, of range twelve west, San Bernardino base and meridian, and thence to the Fort Yuma reservation, in the southeast quarter of section twenty-six, township sixteen south, range twenty-two east, same base and meridian, making three hundred and forty-six miles and ninety-six one-hundredths of a mile of road, has been constructed and fully completed and equipped in the manner prescribed by the said act of July 27, 1866.

And whereas it is further shown that copies of the report of said commissioners have been filed in the department of the interior with copies of the orders of the President of the United States, dated May 9, 1874, Nov. 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878, of the completion of the above portion of said railroad and telegraph line.

And whereas, certain tracts have been selected under the act aforesaid, by Jerome Madden, the duly authorized land agent of the Southern Pacific Railroad Company, as shown by his original lists of selections, dated July 12, 1882, and May 14, 1883, and certified July 14, 1882, March 9, and May 25, 1883, by the register and receiver at Los Angeles district, California. The said tracts of land lie conterminous to the constructed line of road and are particularly described as follows, towit:

North of base line and west of San Bernardino principal meridian, California.

Township one, range six.

The northeast quarter of the northeast quarter, the south half of the northeast quarter, the northwest quarter of the northwest quarter, the south half of the northwest quarter, and the south half of section twenty-three, containing five hundred and sixty acres. All of section twenty-five, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. All of section thirty-one, containing six hundred and forty-two acres and ninety-two one-hundredths of an acre. All of section thirty-five containing six hundred and forty acres.

Township two, range seven.

The lots numbered one, two, three and four of section twenty-one, containing one hundred and thirty-six acres and fifty-six one-hundredths of an acre. The east half of the northeast quarter, the east half of the southeast quarter, and the lots numbered one, two, three and four of section twenty-seven, containing one hundred and seventy-three acres and forty-eight one-hundredths of an acre. The east half of the northeast quarter, the northwest quarter of the northeast quarter, the southeast quarter of the southeast quarter, and the lots numbered one, two, three and four of section thirty-five,

containing one hundred and sixty-five acres and eighty-eight one-hundredths of an acre.

Township one, range eight.

The west half of the southwest quarter of section thirteen, containing eighty acres.

Township one, range fourteen.

The lots numbered one, two, three and four of section twenty-seven, containing seventy-eight acres and forty-nine one-hundredths of an acre. The south half of the southeast quarter, the south half of the southwest quarter, and the lots numbered one, two, three and four of section thirty-one, containing three hundred and sixteen acres and forty-one hundredths of an acre. The south half of the southeast quarter, the south half of the southwest quarter, and the lots numbered one, two, three and four of section thirty-three, containing two hundred and forty-nine acres and twenty-one hundredths of an acre. The east half of section thirty-five, containing three hundred and twenty acres.

Township three, range nineteen.

The northwest quarter of section three, containing one hundred and sixty acres.

Township four, range nineteen.

All of section fifteen, containing six hundred and forty acres. The east half of the northeast quarter, and the east half of the southeast quarter of section seventeen, containing one hundred and sixty acres. All of section

twenty-one, containing six hundred and forty acres. The east half of the northeast quarter, and the northeast quarter of the southeast quarter of section twenty-nine, containing one hundred and twenty acres. The southeast quarter of the northeast quarter of section thirty-three, containing forty acres.

South of base line and west of San Bernardino principal meridian, California.

Township one, range fourteen.

The south half of the northeast quarter, the southwest quarter of the northwest quarter, and the lots numbered three, four, five, seven and ten of section three, containing two hundred and fifty-nine acres and ninety-eight one-hundredths of an acre. All of section five, containing six hundred and forty acres and fifty-four one-hundredths of an acre. The north half of section seven, containing three hundred and twenty acres and forty-four one-hundredths of an acre.

Township one, range fifteen.

The lots numbered one, two and three, the south half the northeast quarter, the southeast quarter of the northwest quarter, and the south half of section one, containing five hundred and sixty acres. The northeast quarter, the south half of the northwest quarter, and the south half of section eleven, containing five hundred and sixty acres.

Township one, range eleven.

The west half of the northeast quarter, the southeast

quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section fifteen, containing one hundred and sixty acres.

Township one, range four.

The lots numbered one and two, and the northeast quarter of the southwest quarter of section thirteen, containing one hundred and thirteen acres and fifty-four one-hundredths of an acre.

Township one, range five.

All of section twenty-seven, containing five hundred and thirty acres and thirty one-hundredths of an acre.

Township one, range six.

The west half of the southwest quarter of section nine, containing eighty acres. The west half of section eleven, containing three hundred and twenty acres. The south half of section thirteen, containing three hundred and twenty acres. All of section fifteen, containing six hundred and forty acres. The east half of the northeast quarter of section seventeen, containing eighty acres.

Township one, range nine.

The south half of the southwest quarter of section fifteen, containing eighty acres. The south half of the southeast quarter of section nineteen, containing eighty acres. The northwest quarter of the northeast quarter, and the south half of section twenty-one containing three hundred and sixty acres. The north half of the south-

west quarter of section twenty-seven, containing eighty acres.

Township one, range ten.

The southwest quarter of the southwest quarter of section fifteen, containing forty acres. The east half of the northeast quarter, the north half of the southeast quarter, and the lots numbered five and six of section nineteen, containing one hundred and eighty-nine acres and forty-three one-hundredths of an acre. The northeast quarter of the southwest quarter, the northeast quarter of the northeast quarter, and the lots numbered three and four of section twenty-one, containing one hundred and fifty-five acres and forty-four one-hundredths of an acre.

Township one, range eleven.

The nortwest quarter of the northwest quarter of section thirteen, containing forty acres.

Township three, range nineteen.

The lot numbered one, and the southeast quarter of the northeast quarter of section five, containing seventy-nine acres and ninety-five one-hundredths of an acre.

Township four, range nineteen.

The west half of section twenty-three, containing three hundred and twenty acres. The north half of section twenty-seven, containing three hundred and twenty acres.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said acts of Congress, have given, and granted, and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing. Yet excluding and excepting "all mineral lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute "shall not be construed to include coal and iron lands."

To have and to hold the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

In testimony whereof, I, Chester A. Arthur, President of the United States, have caused these letters to be made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington, this twenty-seventh day of December, in the year of our Lord, one thousand eight hundred and eighty-three, and of the Independence of the United States, the one hundred and eighth.

By the President,
CHESTER A. ARTHUR.
W. H. COOK,
Secretary.

[Seal of United States general land office.]

S. W. Clark,
Recorder of the general land office.

[Endorsed]: Recorded at the request of Wells, Fargo & Co., March 11, A. D. 1884, at 45 min. past 2 P. M., in Book 1 of Patents, page 257, et seq., records of Ventura Co., Cal. John T. Stow, recorder. By I. H. Warring, deputy.

Received for record March 4, 1884, at 12 o'clock M., at request of Wells, Fargo & Co., and recorded in Book No. 3 of Patents, records San Diego Co., page 115, et seq., Mch. 6, 1884, at ten o'clock and 15 min. A. M. E. G Haight, county recorder. By H. T. Christian, deputy. $9.75.

Recorded at request of Wells, Fargo & Co., Feb. 13, A. D. 1884, at 8:45 A. M. Book "B" of Land Patents, pages 322, et seq. W. F. Holcomb, county recorder, San Bernardino Co. By E. A. Nisbet, deputy. $8.35.

No. 39. Recorded at the request of Wells, Fargo & Co., April 7, 188 , at 45 minutes past 3 P. M., in Book "C" of Patents, page 446, et seq. Records San Bernardino county, A. S. Davidson, county recorder. No fee, re-recorded to correct error in former record.

Recorded at request of C. Cabot, February 9, 1884, at 5 min. past 4 P. M., in Book 3 of Patents, page 328, et seq. Records Los Angeles county, Chas. E. Miles, county recorder, by W. B. Prichard, Deputy. $9.30 pd.

Filed April 25, 1888, Chas. H. Dunsmuir, Clerk, by A. N. Hamilton, Deputy.

Marked "Defendants' Exhibit No. 183, Stephen Potter, Special Examiner."

I certify that I have compared the foregoing document with the original patent now in the possession of the Southern Pacific Railroad Company, and marked by me "Defendants' Exhibit No. 183," in the case of the United States of America, complainant, vs. Southern Pacific Railroad Company et al., defendants. No. 600, and find it to be a full, true, and correct copy thereof so far as it covers the lands involved in said suit.

San Francisco, July 13, 1895.

STEPHEN POTTER,
Special Examiner.

[Endorsed]: Filed February 10, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 184.

PATENT NO. 8.

OF

LANDS GRANTED

BY THE

ACT OF MARCH 3, 1871,

TO THE

SOUTHERN PACIFIC RAILROAD

COMPANY,

LOS ANGELES DISTRICT,

CALIFORNIA.

(Stamped): Land department, Southern Pacific Rail road. Received August 18, 1884. Answered ——— 188 . Book ——— Page ———.

The United States of America, to All to Whom These Presents Shall Come, Greeting:

Whereas, by the Act of Congress approved July 27, 1866, and joint resolution of June 28, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," and to secure to the government the use of the same for postal, military and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporat*ing* existing under the laws of the State to construct a railroad and telegraph line, under certain conditions and stipulations expressed in said act from the city cityof San Francisco to a pointof connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for granting to the said company, "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office."

And whereas, it is further enacted by the 23d section of the Act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions, as were granted to said Southern Pacific Railroad Company of California," by the aforesaid Act of July 27, 1866.

And whereas, official statements bearing dates May 11, 1874, November 13, 1875, July 22, 1876, March 3, 1877, and January 30, 1878, from the secretary of the interior, have been filed in the general land office, showing that the commissioners appointed by the president under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him, that the line of said branch railroad and telegraph from the town of Mojave, in township 11 north of range 12 west, San Bernardino base and meridian, and thence to the Fort Yuma reservation, in the southeast quarter of section 26, township 16 south, range 22 east, same base and meridian, making 346.96 miles of road has been constructed and fully completed and equipped in the manner prescribed by the said Act of July 27, 1866.

And whereas, it is further shown that copies of the report of said commissioners have been filed in the department of the interior, with copies of the orders of the presi-

dent of the United States, dated May 9, 1874, November 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878, of the completion of the above portion of said railroad and telegraph line.

And whereas, certain tracts have been selected under the act aforesaid by Jerome Madden, the duly authorized land agent of the Southern Pacific Railroad Company, as shown by his original list of selections, dated May 14, 1883, and certified May 25, 1883, by the register and receiver, at Los Angeles, California. The said tracts of land lie coterminous to the constructed line of road and are particularly described as follows, towit:

North of base line and west of San Bernardino principal meridian, California.

Township 1, range 11.

The lot numbered 2 of the southwest quarter, the east half of the southwest quarter, and the southeast quarter of section seven, containing 283.75 acres.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said Acts of congress have given and granted, and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing: Yet ——— excluding and excepting, "All Mineral Lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute, "shall not be construed to include coal and iron lands."

To have and to hold the same together with all rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

In testimony whereof, I, Chester A. Arthur, president of the United States, have caused these letters to be made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington, this eighth day of August, in the year of our Lord one thousand eight hundred and eighty-four and of the Independence of the United States the one hundred and ninth.

By the President, CHESTER A. ARTHUR.

M. McKean,
Secretary.

[Seal of the United States General Land Office.]

S. W. CLARK,
Recorder of the general land office.

Recorded in Vol. 8, pages 386 to 388 inclusive.

[Endorsed]: Recorded at request of C. Cabot, August 22, 1884, at 30 min. past 9 A. M., in Book 3 of Patents, page 436 Records Los Angeles county, Chas. E. Miles, county recorder, by ————————. $2.70 paid.

Marked "Defendants' Exhibit No. 184, Stephen Potter, special examiner."

I certify that I have compared the foregoing document with the original patent now in the possession of the

Southern Pacific Railroad Company, and marked by me, "Defendants' Exhibit No. 184," in the case of the United States of America, complainant, vs. Southern Pacific Railroad Company et al., defendants, No. 600, and find it to be a full, true, and correct copy thereof, so far as it covers the lands involved in said suit.

STEPHEN POTTER,
Special Examiner.

San Francisco, July 13, 1895.

[Endorsed]: Filed February 10, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 185.

PATENT NO. 9.

OF

LANDS GRANTED

BY THE

ACT OF MARCH 3, 1871,

TO THE

SOUTHERN PACIFIC RAILROAD

COMPANY,

LOS ANGELES DISTRICT,

CALIFORNIA.

(Stamped): Land Department, Southern Pacific Railroad Company. Received January 23, 1885. Answered————188 . Book ——. Page ——.

The United States of America, To All To Whom These Presents Shall Come, Greeting:

Whereas, by the Act of Congress approved July 27, 1866, and joint resolution of June 28, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and to secure to the government the use of the same for postal, military, and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State to construct a railroad and telegraph line, under certain conditions and stipulations expressed in said act from the city of San Francisco to a point of connection with the Atlantic & Pacific Railroad near the boundary line of said State, and provision is made for granting to the said company, "every alternate section of public land, not mineral, designated by odd unmbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims at the time the line of said road is designated by plat thereof, filed in the office of the commissioner of the general land office.

And whereas, it is further enacted by the twenty-third section of the Act of March 3, 1871, "for the pur-

pose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California, is hereby authorized (subject to the laws of California), to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California," by the aforesaid Act of July 27, 1866.

And whereas, official statements bearing dates May 11, 1874, November 13, 1875, July 22, 1876, March 3, 1877, and January 30, 1878, from the secretary of the interior, have been filed in the general land office, showing that the commissioners appointed by the president under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him, that the line of said branch railroad and telegraph from the town of Mojave in township 11, north of range 12 west, San Bernardino base and meridian, and thence to the Fort Yuma reservation in the southeast quarter of section 26, township 16 south, range 22 east, same base and meridian, making 346.96 miles of road have been constructed and fully completed and equipped in the manner prescribed by the said Act of July 27, 1866.

And whereas, it is further shown that copies of the report of said commissioners have been filed in the department of the interior, with copies of the orders of the president of the United States, dated May 9, 1874, No-

vember 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878, of the completion of the above portion of said railroad and telegraph line.

And whereas, certain tracts have been selected under the act aforesaid, by Jerome Madden, the duly authorized land agent of the Southern Pacific Railroad Company, as shown by his original lists of selections, dated June 27, 1877, May 4, 1883, April 7, May 17, and June 27, 1884, and certified July 2, 1877, May 25, 1883, and April 16, May 23, and July 19, 1884, by the register and receiver at Los Angeles, California. The said tracts of land lie coterminous to the constructed line of road and particularly described as follows, to wit:

North of base line and west of San Bernardino principal meridian, California.

Township 1, Range 4.

The southwest quarter of the northeast quarter, the west half of the southeast quarter and the west half of section 11, containing 440 acres.

Township 1, Range 10.

The north half of the northeast quarter of section 25, containing 80 acres.

Township 7, Range 13.

All of section 7, containing 636 acres.

Township 7, Range 14.

All of section 1, containing 636.86 acres. All of section 3, containing 631.21 acres. All of section 5,

containing 628.74 acres. The northwest quarter, the lot numbered 1 of the southwest quarter, the north half of the lot numbered 2 of the southwest quarter, and the east half of section 7, containing 600 acres. All of section 9, containing 640 acres. All of section 11, containing 640 acres.

Township 7, Range 15.

All of section 1, containing 640 acres. The north half of section 3, containing 320 acres. The east half of the northwest quarter, and the north half of the northeast quarter of section 5, containing 160 acres.

Now, know ye, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, have given and granted, and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing. Yet excluding and excepting "All Mineral Lands," should any be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute "shall not be construed to include coal and iron lands."

To have and to hold the same together with all rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

In testimony whereof, I, Chester A. Arthur, president of the United States, have caused these letters to be

made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington, this ninth day of January, in the year of our Lord, one thousand eight hundred and eighty-five, and of the Independence of the United States, the one hundred and ninth.

By the President: CHESTER A. ARTHUR.

M. McKean,
Secretary.

[Seal of the United States General Land Office]

S. W. CLARK,
Recorder of the General Land Office.

Recorded in Vol. 8, pages 413 to 419, inclusive.

[Endorsed]: Received for record February 9, 1885, at 30 minutes past 9 o'clock A. M., at request of Wells, Fargo & Company, and recorded in Book 3 of Patents, page 234, et seq., February 26, 1885, at 3 o'clock and—— minutes P. M. S. A. McDowell, county recorder, San Diego County, by ————, deputy. $6.75.

Recorded at the request of C. Cabot, January 30, 1885, at 10 minutes past 3 P. M., in Book 3 of Patents, page 489, Records Los Angeles county. Chas. E. Mills, county recorder, by ————.

Recorded at request of Wells, Fargo & Co., February 5, A. D. 1885, at 35 minutes past 10 A. M., Book B of Patents, pages 388 to 396 inclusive. Legare Allen, county recorder, San Bernardino.

Marked "Defendants' Exhibit No. 185, Stephen Potter, Special Examiner."

I certify that I have compared the foregoing document with the original patent now in the possession of the Southern Pacific Railroad Company, and marked by me, "Defendants' Exhibit No. 185," in the case of the United States of America, complainant, vs. Southern Pacific Railroad Company et al., defendants, No. 600, and find it to be a full, true, and correct copy thereof, so far as it covers the lands involved in said suit.

San Francisco, July 15, 1895.

STEPHEN POTTER,
Special Examiner.

[Endorsed]: Filed February 10, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 186.

PATENT NO 10.

OF

INDEMNITY LANDS GRANTED

BY THE

ACT OF MARCH 3, 1871,

TO THE

SOUTHERN PACIFIC RAILROAD

COMPANY,

LOS ANGELES DISTRICT,

CALIFORNIA.

(Stamped): Land Department Southern Pacific Railroad. Received Jan. 23, 1885. Answered————, 188 . Book ——. Page ——.

The United States of America, To All To Whom These Presents Shall Come, Greeting:

Whereas,by the Act of Congress approved July 27, 1866, and joint resolution of June 28, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," and to secure to the government the use of the same for postal, military, and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line, under certain conditions and stipulations expressed in said act, from the city of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for granting to the said company, "every alternate section of public land, not mineral, designated by odd unmbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims, at the time the line of said road is designated by a plat thereof filed in the office of the commissioner of the general land office."

And whereas, it is further provided by said act, that "whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the secretary of the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not included in the reserved numbers."

And whereas, it is further enacted by the 23d section of the Act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California, is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Raliroad Company of California," by the aforesaid Act of July 27, 1866.

And whereas official statements bearing dates March and January 30, 1878, from the secretary of the interior, and January 30, 1898, from the secretary of the interior, have been filed in the general land office, showing that the commissioners appointed by the President under the provisions of the fourth section of the said act of July 27, 1866, have reported to him that the line of said branch

railroad and telegraph, from the town of Mojave, in township eleven north of range twelve west, San Bernardino base and meridian, and thence to the Fort Yuma reservation, in the southeast one-quarter of section twenty-six, township sixteen south, range twenty-two east, same base and meridian, making three hundred and forty-six miles and ninety-six one-hundredths of a mile of road, has been constructed and fully completed and equipped in the manner prescribed by the said act of July 27, 1866.

And whereas it is further shown that copies of the reports of said commissioners have been filed in the department of the interior with copies of the orders of the President of the United States, dated May 9, 1874, November 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878, on the completion of the above portion of said railroad and telegraph line.

And whereas certain tracts have been selected under the act aforesaid by Jerome Madden, the duly authorized land agent of the said Southern Pacific Railroad Company, as shown by his original list of selections, dated June 27, 1884, and certified, July 19, 1884, by the register and receiver at Los Angeles, California. The said tracts of land lie coterminous to the constructed line of road and are particularly described as follows, towit:

North of base line and west of San Bernardino principal meridian, California.

Township Seven, Range Fifteen.

The west half of the north quarter of section five, containing eighty acres.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said acts of Congress, have given and granted, and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing. Yet excluding and excepting "all mineral lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute "shall not be construed to include coal and iron lands."

To have and to hold the same together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

In testimony whereof, I, Chester A. Arthur, President of the United States, have caused these letters to be made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington, this ninth day of January, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

By the President:

CHESTER A. ARTHUR,

M. McKean,

Secretary.

[Seal of the United States General Land Office.]

S. W. CLARK, recorder of the general land office.

Recorded in Vol. 8, pages 420 to 423, inclusive.

[Endorsed]: Received for record February 6, 1885, at ten o'clock, A. M., at request of Wells, Fargo & Co., and recorded in book No. 3 of patents, page 230 et seq. Feb, 24, 1885, at 5 o'clock P. M.

$4.35.

S. A. McDOWELL,
County Recorder, San Diego county, Cal.

Recorded at request of C. Cabot, January 30, 1885, at 12 minutes past 3 P. M., in book 3 of patents, page 497, Records Los Angeles county. Chas. E. Mills, county recorder.

(Marked) "Defendants' Exhibit No. 186; Stephen Potter, special examiner."

I certify that I have compared the foregoing document with the original patent, now in the possession of the Southern Pacific Railroad Company, and marked by me "Defendants' Exhibit No. 186," in the case of the United States of America, complainant, vs. Southern Pacific Railroad Company et al., defendants, No. 600, and find it to be a full, true and correct copy thereof so far as it covers the lands involved in said suit.

San Francisco, July 15, 1895.

STEPHEN POTTER,
Special Examiner.

[Endorsed]: Filed February 10, 1896. Wm. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES OF AMERICA, Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, et al., Defendants. } No. 600.

Report of Special Examiner.

To the Honorable Circuit Court of the United States, in and for the Southern District of California:

In accordance with the request of Joseph H. Call, Esq. counsel for the complainant in this cause, I now report to the Court the following extracts from the proceedings before me as special examiner herein, in order that the Court may make such ruling in the matter as it may deem proper:

On the sixth day of August, 1896, JEROME MADDEN, a witness on behalf of the defendants, appeared before me, and after being duly sworn, proceeded to give his testimony, from which the following extract is made:

"Mr. SINGER.—I will exhibit in evidence original patent No. 26, issued by the United States to the Southern Pacific Railroad Company for lands within the primary

limits of its main line grant. The patent is dated the twenty-second day of December, 1894, and conveys 47,505.86 acres of land, and ask that the examiner make and attach a copy to the record as 'Defendants' Exhibit No. 329.' My understanding is that this patent conveys 12,338.77 acres only of lands involved in this suit.

"(The original patent exhibited by counsel is marked by the special examiner 'Defendants' Exhibit No. 329,' and a copy thereof certified by the examiner is attached hereto.)

"Mr. SINGER.—I exhibit in evidence original patent No. 27, issued by the United States to the Southern Pacific Railroad Company for lands within the indemnity limits of its branch line grant. The patent is dated the twenty-eighth day of November, 1894, and conveys 30,899.45 acres of land. I ask that the examiner make and attach a copy as 'Defendants' Exhibit No. 330.' My understanding is that this patent conveys 25,297.15 acres of land only involved in this suit.

"(The original patent exhibited by the counsel is marked by the special examiner 'Defendants' Exhibit No. 330,' and a copy thereof certified by the examiner is attached hereto.)

"Mr. SINGER.—I exhibit in evidence patent No. 27, issued by the United States to the Southern Pacific Railroad Company for lands within the indemnity limits of its main line grant. The patent is dated the twenty-seventh day of July, 1895, and conveys 11,260.68 acres. I ask that the examiner make a copy and attach it to the record as 'Defendants' Exhibit No. 331.' My understand-

ing is that this patent conveys 1,838.86 acres only of the lands involved in this suit.

"(The original patent exhibited in evidence by counsel is marked by the special examiner 'Defendants' Exhibit No. 331,' and a copy thereof, certified by the examiner, is attached hereto.)

"Mr. CALL.—These several patents, and particularly the patent last offered, dated July 27, 1895, are objected to upon the further ground that the same were procured fraudulently and surreptitiously through the interior department and contrary to the express orders of the secretary of the interior, and in pursuance of a fraudulent conspiracy to obtain title to the lands involved in this suit; it further appearing from the face of the patent dated July 27, 1895, that said writing therein contained is in the handwriting of the same person who fraudulently altered the letters dated March 9, 1872, from the secretary of the interior to Hillyer, attorney for the Atlantic & Pacific Railroad Company, and from the secretary of the interior of the same date to the president of the Atlantic & Pacific Railroad Company, and the letter of the same date from the secretary of the interior to the commissioner of the general land office; and I object to the patent being withdrawn for those reasons, upon making any copy, and I direct that the same be retained and filed with the record in the case as an original document."

On cross-examination of the witness Madden, the following proceedings were had touching the matters referred to in the foregoing extract:

"Mr. CALL.—Q. Referring to one of the patents produced by you, being patent No. 27, marked 'Defendants' Exhibit No. 321,' state when and where that patent came into your possession?

"A. It was received by me at the land office of the Southern Pacific Railroad Company in San Francisco, on the sixth of August, 1895.

"Q. Do you know anything about the circumstances under which it was issued?

"A. I only know that the land was selected by the company and patent issued on the selection.

"Q. Did you know that there was an order of the secretary of the interior that no patents should be issued within the limits of the Atlantic & Pacific grant pending the trial of this suit? A. I did not.

"Q. Do you know whose handwriting that patent is in?

"A. I have not the slightest idea; I never saw it before.

"Mr. CALL.—I offer this patent in evidence and request that the same be marked 'Exhibit B' on cross-examination of Jerome Madden.

"Mr. SINGER.—I object to the introduction of the patent, and deny the right of counsel to offer it, as it was only given him for the purpose of the cross-examination, and as attorney for the defendants I instructed Mr. Madden not to permit the patent to leave his possession except for the purpose of being copies by the examiner.

"Mr. CALL.—I give notice that at the earliest opportunity I will move the Court to suppress and exclude this

deposition of Jerome Madden, by reason of the refusal of the witness to produce and to file in evidence before the examiner the patent referred to.

"Mr. SINGER.—The patent is exhibited to the examiner in evidence, and will be produced in Court at the hearing, or on any order of the Court to produce it, but I deny the right of counsel to appropriate the property of the defendants in the way sought.

"Mr. CALL.—I wish to say further on behalf of the government that I insist that the original patents offered by the defendants shall be filed in evidence, and not any substituted copies. Mr. Madden, under the advice of your counsel, then, you refuse to file the originals with the examiner, except for the purpose of making copies?

"A. I refuse to, except for that purpose, acting under the advice of counsel.

"Mr. CALL.—I request that the examiner will certify to the Circuit Court, wherein this cause is pending, the full circumstances of this controversy, and the refusal of the witness, Jerome Madden, to produce and to permit to be filed the patents called for by the government on cross-examination, in order that the Court can take proper action in respect thereto."

I certify that the foregoing report contains a full, true and correct copy of the testimony and proceedings had before me on the sixth day of August, 1898, touching the matters referred to therein, and that it contains all of the testimony and proceedings relating thereto.

Witness my hand this twenty-seventh day of August, A. D. 1896.

STEPHEN POTTER,
Special examiner.

[Endorsed]: No. 600. United States of America vs. Southern Pacific Railroad Company et al. United States Circuit Court, Southern District of California. Report of special examiner Stephen Potter. Extract of proceedings. Filed August 28, 1896. Wm. M. Van Dyke, Clerk, by E. H. Owen, deputy.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES OF AMERICA,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, et al.,
Defendants.
No. 600.

Proceedings had before Special Examiner Potter.

On August 6, 1896, at 11 o'clock A. M., at the city of San Francisco, State of California, there appeared before me, Joseph H. Call, Esq., special United States attorney and solicitor for the complainants, on behalf of the complainants, and William Singer, Jr., attorney for the de-

fendants, on behalf of the defendants, whereupon the following procedings were had:

JEROME MADDEN, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Mr. SINGER.—Q. You are the land agent of the Southern Pacific Railroad Company, one of the defendants in this suit, are you not? A. Yes, sir.

Q. For how long have you been such officer?

A. Since the tenth of May, 1876.

Q. That was the date of the establishment of the land department independently, was it not, of the Southern Pacific Railroad Company?

A. No, it was established about the first of April, 1875; afterward Mr. B. B. Redding was land agent from 1875 until May 10, 1876, and then I became his successor.

Q. Who is the custodian of the contracts issued by the Southern Pacific Railroad Company for the sale of its lands? A. I am.

Q. Do you keep a record in your office of all deeds issued by the company conveying lands sold by it?

A. I do.

Q. Do your records correctly show all contracts and deeds issued by the company for the sale of its lands and the particulars of the sales? A. They do.

Mr. CALL.—It will be understood that the testimony of this witness is all objected to by the government as incompetent, immaterial and irrelevant, together with the documents offered in connection therewith.

Mr. SINGER.—That will be the understanding.

Q. Have you a statement made from the records of

your office showing the sales made by the Southern Pacific Railroad Company of lands involved in this suit which have been patented to it?

A. This is a statement of the patented lands involved in this suit, so far as my knowledge extends; it was made up in the land office of the Southern Pacific Railroad Company under my instructions, and is correct.

Q. Is it a correct statement of each of the transactions shown upon it? A. It is.

Mr. SINGER.—I offer the statement produced by the witness in evidence, and ask that it be marked "Defendants' Exhibit No. 326."

(The paper is marked by the special examiner "Defendants' Exhibit No. 326," and is attached hereto.)

Q. How many forms of contracts have been used in your office in making sales of the company's lands?

A. Two.

(The witness here produced the two forms referred to by him.)

Q. For what class of lands is the contract backed "unpatented lands" used?

A. It is used for the sale of lands for which the company has not received a patent at the time of the sale.

Mr. SINGER.—I offer the form of contract produced by the witness, backed "unpatented lands," and ask that it be marked "Defendants' Exhibit No. 327."

(The paper is marked by the special examiner "Defendants' Exhibit No. 327," and is annexed hereto.)

Q. For what class of lands is the contract backed "contract for a deed" used?

A. It is used for the sale of lands for which the company has a patent.

Q. A patent at the date of the sale?

A. A patent at the date of the sale.

Mr. SINGER.—I will offer that form in evidence, and ask that it be marked "Defendants' Exhibit No. 328."

(The paper is marked by the special examiner "Defendants' Exhibit No. 328," and is attached hereto.)

Mr. SINGER.—I will exhibit in evidence original patent No. 26, issued by the United States to the Southern Pacific Railroad Company for lands within the primary limitsof its main line grant. The patent is dated the twenty-second day of December, 1894, and conveys 47,505.86 acres of land, and ask that the examiner make and attach a copy to the record as "Defendants' Exhibit No. 329." My understanding is that this patent conveys 12,338.77 acres only of lands involved in this suit.

(The original patent exhibited by counsel is marked by the special examiner "Defendants' Exhibit No. 329," and a copy thereof certified by the examiner is attached hereto.)

Mr. SINGER.—I exhibit in evidence original patent No. 27, issued by the United States to the Southern Pacific Railroad Company for lands within the indemnity limits of its branch line grant. The patent is dated the twenty-eighth day of November, 1894, and conveys 30,899.45 acres of land. I ask that the examiner make and attach a copy as "Defendants' Exhibit No. 330." My understanding is that this patent conveys 25,297.15 acres of land only involved in this suit.

(The original patent exhibited by the counsel is marked by the special examiner "Defendants' Exhibit No. 330," and a copy thereof certified by the examiner is attached hereto.)

Mr. SINGER.—I exhibit in evidence patent No. 27, issued by the United States to the Southern Pacific Railroad Company for lands within the indemnity limits of its main line grant. The patent is dated the twenty-seventh day of July, 1895, and conveys 11,260.68 acres. I ask that the examiner make a copy and attach it to the record as "Defendants' Exhibit No. 331." My understanding is that this patent conveys 1,838.86 acres only of the lands involved in this suit.

(The original patent exhibited in evidence by counsel, is marked by the special examiner "Defendants' Exhibit No. 331," and a copy thereof certified by the examiner is attached hereto.)

Mr. CALL.—These several patents, and particularly the patent last offered, dated July 27, 1895, are objected to upon the further ground that the same were procured fraudulently and surreptitiously through the interior department, and contrary to the express orders of the secretary of the interior, and in pursuance of a fraudulent conspiracy to obtain title to the lands involved in this suit; it further appearing from the face of said patent dated July 27, 1895, that said writing therein contained is in the handwriting of the same person who fraudulently altered the letters dated March 9, 1872, from the secretary of the interior to Hillyer, attorney for the Atlantic & Pacific Railroad Company, and from the secretary of the in-

terior of the same date to the president of the Atlantic & Pacific Railroad Company, and the letter of the same date from the secretary of the interior to the commissioner of the general land office; and I object to the patent being withdrawn for those reasons, upon making any copy, and I direct that the same be retained and filed with the record in the case as an original document.

(A recess was then taken until 1:15 P. M.)

August 6, 1896. Afternoon Session.

Direct Examination of JEROME MADDEN (resumed).

Mr. SINGER.—The record of proceedings had on July 8, 1894, before special examiner Potter shows that Mr. Redding offered in evidence as exhibits for the defendants a certified copy of a number of lists, but that they were not delivered to the master and did not accompany his report of those proceedings. For that reason I will now offer the same documents, and ask that they be given the numbers then assigned for them.

Q. Have you present list No. 42 of lands selected by the Southern Pacific Railroad Company in the granted limits of its main line grant?

A. Yes, sir. (Producing same.)

Q. Is this the original list?

A. This is one of the original lists; that is to say, there are five original lists made out, each of which is called an original; that is the original that I keep; it is practically the original list.

Mr. SINGER.—I will exhibit the list mentioned in evidence and ask that the examiner make a copy of it and attach it to the record as Defendants' Exhibit No. 187.

Mr. CALL.—Objected to as incompetent, immaterial and irrelevant, and upon the further grounds that the list is not approved by the secretary of the interior. Mr. Singer, there are some notations in this list; in making the copies you do not wish to have those notations copied? Those notations are made in red ink in each instance; they are not a part of the list.

Mr. SINGER.—No. It is understood the offer includes the list itself without any notations that are made that do not belong to it.

Mr. CALL.—Or copies of letters attached.

Mr. SINGER.—No. They are not offered.

Mr. CALL.—You do not offer this as a list which has been approved by the secretary of the interior?

Mr. SINGER.—Lists are never approved by the secretary of the interior, and the list is offered as containing the only approval that any list ever does contain, that of the register and receiver.

Mr. CALL.—Here are other notations made in black ink that are not to be copied.

Mr. SINGER.—Certainly not.

Mr. CALL.—I will consent that copies may be substituted after having been compared and certified by the examiner, subject to objections made to the originals.

(List No. 42 of lands selected by the Southern Pacific Railroad Company in the granted limits of its main line grant is marked by the special examiner "Defendants' Exhibit No. 187," and a copy thereof certified by the examiner is annexed hereto.)

Mr. SINGER.—Q. Is this original list No. 77 of lands

selected by the Southern Pacific Railroad Company within the granted limits of the main line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 189.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked by the special examiner "Defendants' Exhibit No. 189," and a copy thereof certified by the examiner is attached hereto.)

Mr. SINGER.—Is this original list No. 80 of lands selected by the Southern Pacific Railroad Company within the granted limits of the main line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 191.

Mr. CALL.—The same objection and the same stipulation.

(The original list identified by the witness is marked by the special examiner "Defendants' Exhibit No. 191," and a copy thereof certified by the examiner is annexed hereto.)

Mr. SINGER.—Q. Is this original list No. 1 of lands selected by the Southern Pacific Railroad Company in the Los Angeles land district, State of California, within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made by the examiner and certified and attached to the record as "Defendants' Exhibit No. 193."

Mr. CALL.—Same objection and stipulation.

(The original list identified by witness is marked by the special examiner "Defendants' Exhibit No. 193," and a copy thereof certified by the examiner is attached hereto.)

Mr. SINGER.—Q. Is this list No. 2, of lands selected by the Southern Pacific Railroad Company in the Los Angeles land district, State of California, within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 195.

Mr. CALL.—The same objection and the same stipulation.

(The original list identified by the witness is marked by the special examiner "Defendants' Exhibit No. 195," and a copy thereof certified by the examiner is attached hereto.)

Mr. SINGER—Q. Is this original list No. 4, of lands selected by the Southern Pacific Railroad Company in the Los Angeles land district, State of California, within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 197.

Mr. CALL.—The same objection and the same stipulation.

(The original list identified by witness is marked by the

special examiner "Defendants' Exhibit No. 197," and a copy thereof duly certified is attached hereto.)

Mr. SINGER.—Q. Is this original list No. 5, of lands selected by the Southern Pacific Railroad Company in the Los Angeles land district, State of California, within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as "Defendants' Exhibit No. 199."

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked by the special examiner "Defendants' Exhibit No. 199," and a copy thereof duly certified is annexed hereto.)

Mr. SINGER.—Q. Is this original list No. 8, of lands selected by the Southern Pacific Railroad Company within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 201.

Mr. CALL.—The same objection and the same stipulation.

(The original list identified by witness is marked by the special examiner "Defendants' Exhibits No. 201," and a copy thereof duly certified by the examiner is annexed hereto.)

Mr. SINGER.—Q. Is this original list No. 11, of lands selected by the Southern Pacific Railroad Company within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as "Defendants' Exhibit No. 203."

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked by the special examiner "Defendants' Exhibit No. 203, and a copy thereof duly certified is hereto annexed.)

Mr. SINGER.—Q. Is this original list No. 13, of lands selected by the Southern Pacific Railroad Company within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as "Defendants' Exhibit No. 205."

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked by the special examiner "Defendants' Exhibit No. 205," and a copy thereof duly certified is annexed hereto.)

Mr. SINGER.—Q. Is this original list No. 17, of lands selected by the Southern Pacific Railroad Company, within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 207.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked by the special examiner "Defendants' Exhibit No. 207," and a copy thereof, duly certified by the examiner, is hereto annexed.)

Mr. SINGER.—Q. Is this original list No. 18, of lands selected by the Southern Pacific Railroad Company within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 209.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by the witness is marked by the special examiner "Defendants' Exhibit No. 209," and a certified copy of same attached hereto.)

Mr. SINGER.—Q. Is this original list No. 21 of lands selected by the Southern Pacific Railroad Company within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 211.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by the witness is marked by the special examiner "Defendants' Exhibit No. 211," and a copy thereof duly certified by the examiner is hereto annexed.)

Mr. SINGER.—Q. Is this original list No. 28 of lands selected by the Southern Pacific Railroad Company within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 213.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by the witness is marked by the special examiner "Defendants' Exhibit No. 213," and a copy thereof duly certified by the examiner is annexed hereto.)

Mr. SINGER.—Q. Is this original list No. 30 of lands selected by the Southern Pacific Railroad Company within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 215.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked by the special examiner "Defendants' Exhibit No. 215," and a copy thereof duly certified by the examiner is annexed hereto.)

Mr. SINGER.—Q. Is this original list No. 33 of lands selected by the Southern Pacific Railroad Company within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 217.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked by the special examiner "Defendants' Exhibit No. 217," and a copy thereof duly certified by the examiner is annexed hereto.)

Mr. SINGER.—Q. Is this original list No. 34 of lands selected by the Southern Pacific Railroad Company with-

in the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 219.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked by the special examiner "Defendants' Exhibit No. 219," and a copy thereof duly certified by the examiner is annexed hereto.)

Mr. SINGER.—Q. Is this original list No. 63 of lands selected by the Southern Pacific Railroad Company within the granted limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 221.

Mr. CALL.—The same objection and same stipulation.

(The original list identified by witness is marked by the special examiner "Defendants' Exhibit No. 221," and a copy thereof duly certified by the examiner is annexed hereto.)

Mr. SINGER.—Q. Is this original list No. 5 of lands selected by the Southern Pacific Railroad Company within the indemnity limits of the branch line grant (showing)? A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 223.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked by

the special examiner "Defendants' Exhibit No. 223," and a copy thereof duly certified by the examiner is attached hereto.)

Mr. SINGER.—Q. Is this original list No. 6 of lands selected by the Southern Pacific Railroad Company within the indemnity limits of the branch line grant (showing)? A. It is.

Mr. SINGER.—I will offer the list in evidenec and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 225.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by the witness is marked "Defendants' Exhibit No. 225," and a copy thereof duly certified by the examiner is hereto annexed.)

Mr. SINGER.—Is this original list No. 7 of lands selected by the Southern Pacific Railroad Company within the indemnity limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 227.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked "Defendants' Exhibit No. 227," and a copy thereof duly certified by the examiner is hereto annexed.)

Mr. SINGER.—Q. Is this original list No. 12 of lands selected by the Southern Pacific Railroad Company within the indemnity limits of the branch line grant (showing)? A. It is.

Mr. SINGER.—I will offer the list in evidence and ask

that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 229.

Mr. CALL.—Same objection and stipulation.

(The original list identified by witness is marked "Defendants' Exhibit No. 229," and a copy thereof duly certified by the examiner is hereto annexed.)

Mr. SINGER.—Q. Is this original list No. 19 of lands selected by the Southern Pacific Railroad Company within the indemnity limits of the branch line grant (showing)? A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 231.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked "Defendants' Exhibit No. 231." and a copy thereof duly certified by the examiner is hereto annexed.)

Mr. SINGER.—Q. Is this original list No. 20 of lands selected by the Southern Pacific Railroad Company within the indemnity limits of the branch line grant (showing)? A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 233.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked "Defendants' Exhibit No. 233," and a copy thereof duly certified by the examiner is hereto annexed.)

Mr. SINGER.—Q. Is this original list No. 25 of lands selected by the Southern Pacific Railroad Company with-

in the indemnity limits of the branch line grant (showing)? A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 235.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked "Defendants' Exhibit No. 235," and a copy thereof duly certified by the examiner is hereto annexed.)

Mr. SINGER.—Q. Is this original list No. 26 of lands selected by the Southern Pacific Railroad Company within the indemnity limits of the branch line grant (showing)? A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 237.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked "Defendants' Exhibit No. 237," and a copy thereof duly certified by the examiner is hereto annexed.)

Mr. SINGER.—Q. Is this original list No. 28 of lands selected by the Southern Pacific Railroad Company within the indemnity limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer this list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 239.

Mr. CALL.—Same objection and stipulation.

(The original list identified by witness is marked "De-

fendants' Exhibit No. 239," and a copy thereof duly certified by the examiner is hereto annexed.)

Mr. SINGER.—Q. Is this original list No. 30 of lands selected by the Southern Pacific Railroad Company within the indemnity limits of the branch line grant (showing)?

A. It is.

Mr. SINGER.—I will offer the list in evidence and ask that a copy be made and certified by the examiner and attached to the record as Defendants' Exhibit No. 241.

Mr. CALL.—Same objection and same stipulation.

(The original list identified by witness is marked "Defendants' Exhibit No. 241," and a copy thereof duly certified by the examiner is hereto annexed.)

Cross-Examination of JEROME MADDEN.

Mr. CALL.—Q. Was the value of this land the amount stated in these contracts for the purchase price?

A. Yes, sir; it was valued at that time at those figures.

Q. Is that the value now?

A. In some cases, yes sir; in some cases they have been shaded off.

Q. Reduced somewhat?

A. Reduced somewhat, yes; the value of lands fluctuates, sometimes it is higher and sometimes it is lower; in my department we accommodate ourselves to circumstances, and do as any other person would.

Q. Are any of these lands of less value than a dollar and a quarter an acre?

A. Yes.

Q. Which tracts?

A. I will have to go over the books and see; in the whole grant there are some that are only worth seventy-five cents.

Q. I mean that are covered by these contracts?

A. No, I don't consider that any of them are worth less than a dollar and a quarter an acre.

Q. They have all been sold, as the contracts show, for more than that figure?

A. The value of the land is truly expressed in the contracts, and a larger figure or a smaller figure than the real value has never been put in any of them.

Mr. CALL.—It is admitted that the value of the land is the price it was contracted to be sold at, is it?

Mr. SINGER.—I will admit that the value of the land at the time the contracts were made was the sale price stated in the contract, and I know of no material depreciation below the value at which the land was sold.

Mr. CALL.—Q. Referring to the tabulated statement, marked "Defendants' Exhibit No. 326," you have purported to give in this statement the number, date of the contract, name of purchaser, address, description of the land, number of acres, and amount paid; now, state whether the columns marked "amount paid" represent the purchase price of the several tracts of land, or the amount that was paid to the company?

A. Where the lands were paid for in full, the figures in the column "amount paid" represent truly the full consideration of the contract; where they were bought on time the figures represent the amount the company has received for them up to the date of the contract.

Q. Then that statement does not show the amount of the agreed purchase price?

A. It does not, except in these notes here under the head of "remarks".

Q. Turning to page 2 of this tabulated statement I infer that the column marked "amount paid" there represents the agreed purchase price of the land, with the single exception of the tract sold to M. J. Golden?

A. Yes, that is so.

Q. And as to that tract the agreed purchase price is not the figure given in the column "amount paid" being $427.17?

A. It is not the agreed purchase price, it is the amount received by the company; that is to say, the agreed purchase price was $320, the amount of interest paid was $139.17, making $459.17, from which deduct $32, part of the purchase money yet unpaid, and it leaves $427.17, the figures described in the column headed "amount paid."

Q. Turning to page 3 of the tabulated statement concerning contract No. 10,253, to William Dickey, I find in the column "amount paid" the sum of $800; that figure does not represent the purchase price of the land sold there, does it?

A. $800 is the purchase price in that instance.

Q. In the next sale referred to E. H. Forrester, the "amount paid" is marked as $1,780.80; what was the agreed purchase price in that instance?

A. The agreed purchase price was $4,200, the interest paid was $940.80; the remainder of purchase money due is $3,360; a part of the principal and the interest received

by the company amounted to $1,780.80, that is up to September 24, 1888.

Q. Then the "amount paid" in each instance on that tabulated statement is the amount which the company has received?

A. The amount which the company has received, part of the principal and interest up to the dates given.

Q. Then it does not appear on that tabulated statement anywhere what the amount was which was agreed upon as the purchase price?

A. It does under the "amount paid," where it is uncontrolled by any memorandum under the head of "remarks;" the amounts appearing there are the allowance of the purchase money and interest.

Q. And where there is nothing said under the head of "remarks" then the column marked "amount paid" represents the agreed purchase price in each instance?

A. The figures under "amount paid" represent the purchase price and they also represent the interest received, if any.

Q. What is there, then, to show what the purchase price was exclusive of interest?

A. By reference to the books of the Southern Pacific Land office it can be very easily ascertained.

Q. But it is not shown on this tabulated statement?

A. It is not shown on the tabulated statement, except under the head of these "remarks."

Q. Is there anything on the tabulated statement to show how much interest has been paid?

A. Except under the head of "remarks," no.

Q. Then in the columns where there are no remarks it does not appear from the tabulated statement what part of the amount indicated there as the amount paid represents principal and what part interest?

A. No.

Q. You have referred to two forms of contracts as having been used by the company in making these sales; one is marked "Defendants' Exhibit 327," and the other "328"; did the company, in making each of these sales, use either one or the other of these forms of contract?

A. Those were the only two forms that were used.

Q. Then you used either one or the other of these forms in making each of those sales?

A. Where the land was patented at the time of sale I used the short form; where it was not patented at the time of sale I used the long form; by the short form I mean "Defendants' Exhibit No. 328," and by the long form I mean "Exhibit No. 327."

Q. Does the tabulated statement referred to show what sales were made under the form marked "Exhibit 327," and what sales under the form marked "Exhibit 328"?

A. Some of the sales were made under the form of "327" and some of them were made under the form of "328"; in the one case the land was patented at the time of the sale, and in the other case the land was not patented at the time of the sale, but the patent was received after the sale.

Q. The tabulated statement itself does not show then what sales were made under form "327" and what ones under "328"?

A. It does, but they are not segregated.

Q. It shows all made under both forms?

A. It shows all made under both forms, all lands that were patented on March 26, 1896.

Q. Then if this tabulated statement also contained the date of the issuance of patent for each contract you could know from that which form of contract had been used?

A. Yes, or by reference to the books I could tell at once which form of contract was used.

Q. You have, you say, duplicate copies of these contracts? A. Yes.

Q. I request you to produce for examination before the examiner your duplicate copy of the contracts No. 2418, No. 2338, No. 3627, No. 3931, No. 2830, No. 7687, No. 3596, and No. 4576, set forth on tabulated statement marked "Defendants' Exhibit 26."

A. Yes, I will produce them all.

(Witness produces the contracts asked for.)

Q. The contract of sale No. 2338 was made upon the form marked "Defendants' Exhibit 328" was it not?

A. Contract 2338 was made upon the form of "Defendants' Exhibit 328."

Q. The contract of George L. Arnold and Charles M. Wells on contract No. 7687 was made upon contract form marked "Defendants' Exhibit 327," was it not?

A. It was.

Q. Have you the contracts here for sales Nos. 7657 to 7665 inclusive? A. Yes, sir.

Q. Have you here contract No. 3596?

A. Yes, sir. (Producing contract.)

Q. I notice on the tabulated statement six contracts marked 3596; were there six separate contracts of that number, or were all those tracts of land included in one contract?

A. They were all included in one contract; they aggregated 54,456 acres; you asked me a while ago whether any sold for less than $1.25 an acre; that was all sold for $1 an acre.

Q. Is that all involved in this suit?

A. No, only a portion of it, a very small portion of it, along about the edges of the Tejon ranch, the Castac ranch and the San Emidio ranch.

Q. That land is worth $1.25 an acre, I suppose.

A. They sold it for $1; there is only a small part of the lands described in that contract that is included in this contention.

Q. The lands that are involved in this suit covered by that contract are shown then by the tabulated statement? A. They are.

Q. And covered by this contract No. 3596?

A. Yes, sir.

Q. And are described there? A. Yes, sir.

Q. The number of acres being given?

A. That is right.

Q. That contract was made upon form marked "Exhibit 327"? A. Yes, sir.

Q. These Arnold contracts are all made on the same form, you know that?

A. No, I don't know that, because Arnold he paid up on some and did not pay up on others; where he paid up in full the short form was issued to him, and where he bought on time the long form was used.

Q. But it appears that all these of Arnolds and Wells were made on time payments that are marked on the tabulated statement?

A. If they are marked time payments, there, then they are so; if marked as anything being due I think they were time payments.

Q. They were made on the form marked "Defendants' Exhibit 327"?

A. Yes, sir, if they are time payments.

Q. You can see here from that statement (showing)?

A. Yes, sir, they were.

Q. They were all time payments and on the form "Defendants' Exhibit 327"? A. Yes, sir.

Q. You say that the company has made deeds to these several purchasers and the several tracts of land upon the dates shown upon the tabulated statement, marked "Defendants' Exhibit 326"? A. It has.

Q. What has been the form of that deed?

A. I can produce forms such as we gave.

Q. Please produce the form that you used?

A. That is practically the form; as each lot was exhausted there may have been a change of a word or two in the whole form, but that is practically the form, with the exception that when the railroad did not go through a tract the reservation for right of way is stricken out. (Producing.)

Mr. CALL.—I request that it be marked "Exhibit A on cross-examination of Jerome Madden."

(The paper produced by witness is marked "Exhibit A on cross-examination of Jerome Madden," and is hereto annexed.)

Q. Referring to one of the patents produced by you, being patent No. 27, marked "Defendants' Exhibit No. 321," state when and where that patent came into your possession?

A. It was received by me at the land office of the Southern Pacific Railroad Company, in San Francisco, on the sixth of August, 1895.

Q. Do you know anything about the circumstances under which it was issued?

A. I only know that the land was selected by the company and patent issued on the selection.

Q. Did you know that there was an order of the secretary of the interior that no patents should be issued within the limits of the Atlantic and Pacific grant, pending the trial of this suit? A. I did not.

Q. Do you know whose handwriting that patent is in?

A. I have not the slightest idea, I never saw it before.

Mr. CALL.—I offer this patent in evidence, and request that the same be marked Exhibit B on cross-examination of Jerome Madden.

Mr. SINGER.—I object to the introduction of the patent in evidence, and deny the right of counsel to offer it, as it was only given him for the purpose of the cross-examination, and as attorney for the defendants, I instruct

Mr. Madden not to permit the patent to leave his possession except for the purpose of being copied by the examiner.

Mr. CALL.—I give notice that at the earliest opportunity I will move the Court to suppress and exclude this deposition of Jerome Madden by reason of the refusal of the witness to produce and to file in evidence before the examiner the patent referrred to.

Mr. SINGER.—The patent is exhibited to the examiner in evidence, and will be produced in Court at the hearing, or on any order of Court to produce it, but I deny the right of counsel to appropriate the property of the defendants in the way sought.

Mr. CALL.—I wish to say further on behalf of the government that I insist that the original patents offered by the defendants shall be filed in evidence, and not any substituted copies. Mr. Madden, under the advice of your counsel then, you refuse to file the originals with the examiner, except for the purpose of making copies?

A. I refuse to, except for that purpose, acting under the advice of counsel.

Mr. CALL.—I request that the examiner will certify to the Circuit Court wherein this cause is pending the full circumstances of this controversy, and the refusal of the witness, Jerome Madden, to produce and to permit to be filed the patents called for by the government on cross-examination, in order that the Court can take proper action in respect thereto.

Mr. SINGER.—Mr. Call, will you excuse the signature of Mr. Madden to his deposition?

Mr. CALL.—Yes, sir.

WILLIAM SEXTON, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Mr. CALL.—Is it understood that the testimony of this witness is objected to as incompetent, immaterial and irrelevant?

Mr. SINGER.—That is my understanding.

Q. Where do you reside?

A. My home is San Jose, and my business place is 401 California street, San Francisco.

Q. How long have you been in business in San Francisco?

A. Twenty-three years.

Q. What is your business?

A. Fire insurance; I am now fire insurance adjuster of the Fireman's Fund Insurance Company.

Q. Have you ever purchased any land from the Southern Pacific Railroad Company? A. Yes, sir.

Q. Did a contract issue to you for the land purchased?

A. Yes, sir, I purchased on contracts always.

Q. You have made more than one purchase then, have you?

A. Yes, sir; a great many; that is, a great many for me; a dozen, fifteen or twenty.

Q. Have you with you any contract that issued byb the Southern Pacific Railroad Company to you for the purchase of land? A. Yes, sir.

Q. Will you please produce one of your contracts?

A. Yes, sir; one of them. (Producing paper.)

Q. Was the signature "William Sexton" to that contract written by you?

A. Yes, sir, that is my signature.

Mr. SINGER.—Mr. Call, will you admit that the signatures of Jerome Madden and J. L. Willcutt to the contract are genuine?

Mr. CALL.—Yes, sir, that is admitted.

Mr. SINGER.—Q. Was this contract executed at the time it bears date? A. Yes, sir; it was.

Mr. SINGER.—I will offer in evidence the contract presented, which is numbered 9654, dated June 1, 1888, and ask that a copy be made by the examiner and attached to the record as Defendants' Exhibit No. 332.

Mr. CALL.—I have no objection to the copy being made and certified by the examiner in lieu of the original, subject to all objections to the original as incompetent, immaterial and irrelevant.

(The original document produced by the witness is marked "Defendants' Exhibit No. 332," and a copy thereof duly certified by the examiner is hereto annexed.)

Mr. SINGER.—Q. At the time this contract was made what was your belief in respect of the Southern Pacific Railroad Company's title to the land, the subject thereof?

A. I understood the title was good; I had bought lands from them before in other parts of the State, and I bought with the understanding I would get a title whenever they got it, and that I would pay up for it when I could; that is, I would pay for it if I could when they were ready to pass over the title.

Q. The whole of your agreement is expressed in that contract, is it not? A. Yes, sir.

Q. Did you at the time of this purchase know, or were you then informed, that the United States had, or pretended to have, any title or claim to this land?

A. No, I only knew it was a railroad grant, was subject to all the questions of railroad grants, whatever they might be; I did not know anything about the legal part of it at all, paid no attention.

Q. You did not as a fact at that time either know or have information that the government did claim that particular land in any way?

A. No, sir, I did not; I had no means of knowing other that I did know the railroad company did not have a patent to it, and when they got a patent I would get one. I bought other lands on the same condition; I bought lands in Fresno and Tulare.

Q. At the time of your purchase had you any information at all that the Company's title was in many respects defective?

A. No, I had the information that they did not have a title and were waiting for a patent, that is what I got from them, but I had no information that they would not get a title any more than I had in regard to the other lands I had bought from them before.

Q. Was the consideration expressed in the contract actually paid by you at that time?

A. Yes, the payment was made; I paid it; I bought it on the information I received; in fact, I received the information from my son; he was over there attending to some timber claim I had, and he was over there for his health; he told me about this piece and told me it was good wheat land, up in the rolling wheat land, that

is the reason I bought it; I can tell why I bought each one when my attention is called to it; I never saw this, and I bought it because he said it was good wheat land, it was rolling land, and good wheat was raised in the neighborhood; I have never been there; I bought this as I have bought other lands, on speculation, supposing I would sell it to some one.

Q. Has the contract remained in force ever since?

A. I so consider it, but I have not been able to pay on it as I would like to; the times got hard and I was overloaded with that and other lands, too.

Q. You have never surrendered the contract?

A. No, indeed.

Q. State whether the transaction represented by the contract was a genuine and sincere business transaction?

A. It was; I did it as an investment, and tried to make some money out of it; as I say, I have bought considerable land, probably 2000 acres from them before that, bought and sold again.

Cross-Examination.

Mr. CALL.—Q. This contract recites that $80 has been paid down on it, and $22.40 interest at the time of the execution? A. Yes.

Q. Have you made other payments in addition to that?

A. I don't know whether I have paid the interest on it or not; that is my last contract, and about that time money got scarce; I have a lot of contracts I paid inter-

est on, but I am not certain whether I have paid the interest on that or not.

GEORGE T. FOLSOM, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Mr. SINGER.—Q. Where do you reside?

A. In San Francisco, 1001 Pine street, corner of Taylor, Hotel Bella Vista.

Q. Are you an officer of the Southern Pacific Railroad Company, one of the defendants in this suit?

A. I am not; I am simply the general accountant of the Southern Pacific Railroad Company.

Q. For how long have you held that office?

A. Twenty-three years.

Q. Have you kept or have you now in your custody a record of the bonds issued and sold by the Southern Pacific Railroad Company under the trust deed made on April 1, 1875, by that company to D. O. Mills and Lloyd Tevis, trustees, in trust?

Mr. CALL.—Is it understood that the testimony of this witness is objected to as incompetent, immaterial and irrelevant?

Mr. SINGER.—It will be so understood.

A. Yes, sir.

Q. Please state from your records the total amount of such bonds sold by the Southern Pacific Railroad Company?

A. We treat as sold by the Southern Pacific Railroad Company all bonds issued; if they are paid out to the

contractors for the building of the road we treat them as sold; that is to say, they have paid us for those bonds in road which they have built for us.

Q. What is the total amount of such sale prior to March 3, 1887?

A. The sale of the bonds of 1875 from their date, April, 1875, to March 3, 1887, would be $14,626,000 to the Western Development Company, and $8,476,000 to the P. I. Company, making in all $32,102,000.

Q. And some of them to the Contract and Finance Company?

A. Those were in the old bonds, which I could not very well tell you about; the 1875 bonds were issued to cover a former issue of bonds retired, and then to go on with the construction of the road.

Mr. CALL.—Q. That is the total amount issued between those dates under the mortgage of 1875?

A. Yes, sir, that is the total amount between those dates under the mortgage of 1875; that is, between the dates of April 1, 1875, and the date of March 3, 1887.

Mr. SINGER.—Q. Were all those sales genuine and made for considerations actually paid?

A. They were.

Q. Were the bonds sold at their face value or for some other value?

A. I can say in answer to that that all those bonds were sold at par; yes, sir, they were all sold at par, taken by the contractors; in other words, they were all sold to the contractors of the road in payment for the road; we received as pay for those bonds the road itself, and they were taken by the contractors at par.

Q. To what extent have these bonds been redeemed?

A. We have redeemed bonds to the extent of eight million and some odd thousand dollars, nearly nine million dollars, and those redemptions we treat as applying to the previous issues; in other words, the old bonds were replaced by the now bonds; now, the new bonds, the total issue being an addition to the amount of the old bonds, to the bonss paid out, as I have stated for the construction of the road, to be added to that; it was from those first issues that these redemptions are made; in other words, we consider them as redeeming the oldest bonds.

Q. Then the nine million of dollars of bonds redeemed have been applied to the payment of bonds other than the $32,000,000 that you have mentioned as issued subsequent to April, 1875?

A. That is a question I would have to answer in this way: The total issue of our bonds, that is the present issue of bonds, the 1875 bonds issued in retirement of the old bonds, and in the construction of the new road, of all those bonds that were issued there has been a redemption of somewhere of nine million dollars in round numbers; now we treat that as applying to the earlier bonds, naturally.

Mr. CALL.—Well, that was the earlier bonds?

A. Not necessarily; it was the bonds of 1875, because those bonds replaced the old bonds, and we may redeem bonds of numbers that were issued only six months ago.

Mr. SINGER.—Q. What amount of bonds issued under the trust mortgage of April 1, 1875, are still outstanding unredeemed?

A. I would have to get additional memoranda.

Q. Will this memorandum help you any? (Showing.)

A. Yes, sir, this will; we redeemed, as I stated here, to December 31, 1895, $8,617,500.

Q. Have you redeemed any of the 1875 bonds since December 31, 1895?

A. No, we have not, none at all.

Q. Then the figure $8,617,500 represents the extent of the redemption of the 1875 bonds to date?

A. They do, yes, sir.

Cross-Examination.

Mr. CALL.—Q. The amount outstanding, then, is the difference between those figures?

A. Yes, sir.

Q. The difference between the sum of $23,102,000 and $8,617,500? A. Yes, sir.

Q. All of those bonds were issued to the Pacific Improvement Company or to the Western Development Company?

A. Yes, sir, all these bonds, the figures of which I have given you.

Q. What was the date of that old mortgage which you spoke of redeeming some of the bonds of?

A. I don't remember the date of that mortgage; I don't like to answer unless I know absolutely; of course, I can ascertain the date, but I have so many things to think of in the way of figures that I don't carry the thing in my mind; the mortgage having ceased many years ago, of course I dismissed it from my recollection entirely.

Mr. SINGER.—Will you excuse the signature of Mr. Folsom to his deposition?

Mr. CALL.—Yes, sir.

FRANK S. DOUTY, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Mr. SINGER.—Q. Are you an officer of the Pacific Improvement Company? A. I am.

Q. Were you at any time an officer of the Western Development Company? A. I was.

Q. Did either of those companies ever purchase bonds issued under the trust deed, executed by the Southern Pacific Railroad Company to D. O. Mills and Lloyd Tevis, trustees?

Mr. CALL.—It is understood that the testimony of this witness is objected to as incompetent, immaterial and irrelevant?

Mr. SINGER.—That is my understanding.

A. In the performance of our business in railroad building we acquired these bonds; that was a part of the consideration for building the roads.

Q. Did those companies accept the bonds in payment of contract price for the construction of railroad?

A. On account of the contract price; there were other considerations besides bonds.

Q. Were they taken at their face value? A. Yes.

Q. And in exchange for that did the companies credit them with that amount of money on the contract price for construction?

A. They so treated it, I believe.

Q. Have you any memoranda showing to what extent the bonds were taken by the Western Development Company, and to what extent by the Pacific Improvement Company?

A. Yes, sir. (Producing memoranda.) The Southern Pacific Railroad Company paid the Western Development Company $14,576,000 in bonds at par; they paid the Pacific Improvement Company $7,962,000 in bonds at par, making a total of $22,538,000 in bonds at par.

Q. Do you know to what extent those bonds have been redeemed? A. I am unable to say.

Q. What disposition, if any, did the Western Development Company make of its bonds?

A. Sold them.

Q. To people at large?

A. Yes, sir; wherever they could find buyers.

Q. To various individual purchasers?

A. Yes, sir.

Q. What disposition did the Pacific Improvement Company make of the bonds taken by it?

A. The same disposition.

Cross-Examination.

Mr. CALL.—Q. How many of those bonds do they own now? A. They do not own any.

Q. How many of those bonds do the Western Development Company own now?

A. They do not own any.

Q. Do you know to whom they sold those bonds?

A. I could not say from recollection; I presume I could find records of the transactions in the accounts as they occurred, but that would be no guide as to who owns them now; they are nearly all held in Europe, or in the eastern states, I believe.

Q. The Western Development Company is a corporation organized under the laws of this State?

A. Yes.

Q. And the same of the Pacific Improvement Company? A. Yes.

Q. The officers and stockholders of the Pacific Improvement Company were the same as the Southern Pacific Railroad Company, I believe? A. No.

Q. Substantially?

A. None of the officers, I think, were the officers of the Pacific Improvement Company; some of the directors of the Southern Pacific were the owners of the principal stock of the Pacific Improvement Company.

Q. And also of the Western Development Company?

A. At present, yes, sir.

Q. They were at the time of the construction of the road?

A. I mean by saying "at present, yes" the owners of the Western Development Company originally died and did not participate in the ownership of the Pacific Improvement Company.

Q. Mr. C. P. Huntington, Mr. Leland Stanford, Mr. Charles Crocker, Mr. Mark Hopkins, they were directors of both the Southern Pacific Railroad Company and the Pacific Improvement Company and the Western Development Company?

A. I think none of them were ever directors of the Pacific Improvement Company or the Western Development Company.

Q. But they owned the stock?

A. They owned the stock; they were the principal owners of the stock.

Re-direct Examination.

Mr. SINGER.—Q. Those bond purchases of the Western Development Company and Pacific Improvement Company were all made prior to March 3, 1887, were they? A. Yes.

Q. And the sales of the bonds were also made prior to that date? A. Yes.

Mr. SINGER.—Mr. Call, will you excuse the signature of Mr. Douty from his deposition?

Mr. CALL.—Yes, sir.

(The further hearing of the matter was then continued by consent until August 7, 1896, at the hour of 9:30 o'clock A. M.)

San Francisco, August 7, 1896.

Mr. CALL.—I waive the introduction in evidence of the original contracts and deeds set forth on the tabulated statement marked "Defendants' Exhibit No. 326" in connection with the testimony of Jerome Madden, and consent that the original contracts and lists offered at this hearing may be withdrawn upon a copy of each duly certified by Examiner Potter being substituted therefor; and it is agreed that each of the persons named on the said tabulated statement would, if called as a wit-

ness by the defendants, testify in respect of the purchase made by him as did the witness, William Sexton, in respect of the purchases made by him; and that it may be so considered in this case.

(It is agreed that the supplemental answer of the other defendants shall be considered the same as if Homer S. King had been named as one of the defendants to the supplemental answer filed herein by order of Court made on July 27, 1896, and that such answer shall be deemed and considered to be the answer of Homer S. King, as trustee.

And it is further agreed that the amendments to the defendants' answer filed herein, pursuant to the order of court, made on July 20, 1896, be considered the same as if Homer S. King had been named therein as one of the defendants answering.)

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES OF AMERICA, Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, et al., Defendants. } No. 600.

Certificate to Depositions.

I certify the foregoing testimony was taken pursuant to an order of Court entered upon the minutes of said Court, dated the third day of August, 1896, at No. 4 Montgomery street, in the city and county of San Francisco, and State of California, at the several times set forth in the foregoing record, in my presence, and in the presence of counsel for the respective parties to the above entitled cause; that previous to giving his testimony each of the witnesses in said record named was by me duly sworn to tell the truth, the whole truth and nothing but the truth in said cause; that said testimony was fully, truly and correctly taken in shorthand and transcribed by me; that the said testimony, after being so transcribed, was not read by, or by me to, the said witnesses, nor signed by them, respectively, it being expressly agreed and stipulated between counsel for the respective

parties that such reading and signing should be waived, as in said record set forth; and that I have retained said testimony for the purpose of delivering the same with my own hand to the Court for which it was taken.

Accompanying said testimony and forming part thereof are the several exhibits introduced in connection therewith and referred to and specified therein, except where counsel presenting the exhibits requested that copies thereof be made and attached in lieu of the originals, as set forth in the foregoing record, and in such cases copies of said exhibits duly certified by me as being full, true and correct copies of the original exhibits presented before me are annexed in place of said original exhibits.

I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof, I have hereunto set my hand, this thirteenth day of August, A. D. 1896.

STEPHEN POTTER,
Special examiner.

[Endorsed]: Filed Sept. 18, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 187.

United States Land Office.

Los Angeles, California,

June 1, 1888.

List No. 42.

LANDS SELECTED

By The

SOUTHERN PACIFIC RAILROAD COMPANY.

Granted Limits.

Main Line.

G. L. 90 (10-30-95-250)
(Old G. 153.)

Certificate.

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and now is, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the fifteenth day of May, A. D. 1888.

JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands
in the
Los Angeles Land District, California,
Selected by the
Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, and under and by virtue of the act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled, "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the seventh and tenth sections(sixty-one and sixty-six one-hundredths(61.-66)miles) of the same, commencing at a point in northeast one-fourth, section 5, township 30 south, range 29 east, Mt. Diablo base and meridian, and ending at a point in northeast one-fourth, section 17, township 11 north, range 12 west, San Bernardino base and meridian, which said

sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selection being particularly described as follows:

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad Company.

2 G. L. 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	Name of Range	Area. Acres .100.	Fees of Register and Receiver.
	Frac. W ½ of NW ¼; Frac. W ½ of SW ¼	19	9 N	15 W	155 84	
	All.	13	9 N	16 W	640 00	
	All.	17	"	"	640 00	
	E ½ of NE ¼; NE ¼ of SE ¼	25	"	"	120 00	
	Frac. N ½; N ½ of SE ¼; N ½ of SW ¼	1	11 N	10 W	481 98	
	All fracl.	5	"	"	640 70	
	N ½ of NE ¼; Fracl. N ½ of NW ¼	7	"	"	160 46	
	All fracl.	1	11 N	11 W	639 36	
	All fracl.	3	"	"	638 68	
	All fracl.	5	"	"	641 26	
	Fracl. N ½; N ½ of SE ¼; Fracl. N ½ of SW ¼	7	"	"	478 17	
	N ½	9	"	"	320 00	
	N ½	11	"	"	320 00	
	All fracl.	1	11 N	12 W	640 44	
	All fracl.	3	"	"	642 06	
	All fracl.	5	"	"	643 24	
	All fracl.	7	"	"	637 88	
	All	9	"	"	640 00	
	All	11	"	"	640 00	
	All fracl.	1	11 N	13 W	642 72	
	All	9	"	"	640 00	
	All	11	"	"	640 00	
	N ½	13	"	"	320 00	
	N ½; N ½ of SE ¼; N ½ of SW ¼	15	"	"	480 00	
	Forward,				12,442 79	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

In the Indemnity Limits of the A. & P. grant.

In the Indemnity Limits of the A. & P. grant—SW ¼ covered by T. C. of Leslie H. Root (filed May 14, 1888—Inadvertently allowed).

In the Indemnity Limits of the A. & P. grant.

NOTE.—Matter printed in italic is red in original.

2 G. L. 79 R.
(Old G. 130.)

Railroad List. **North of Base Line, and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.
	Brought forward,				12,442 79	
	N ½; N ½ of SE ¼; N ½ of SW ¼	17	11 N	13 W	480 00	
	All fracl.	5	11 N	14 W	643 82	
	Fracl. NW ¼; E ½	7	"	"	476 56	
	All	9	"	"	640 00	
	All.	13	"	"	640 00	
	All	15	"	"	640 00	
	All.	17	"	"	640 00	
	N ½ of NE ¼	21	"	"	80 00	
	All fracl	1	11 N	15 W	640 60	
	All fracl.	5	"	"	641 28	
	All	9	"	"	640 00	
	All	11	"	"	640 00	
	All	13	"	"	640 00	
	All	15	"	"	640 00	
	All fracl	3	11 N	16 W	640 40	
	Fracl. NE ¼; Lot 3 in NW ¼; S ½ of NW ¼; S ½	5	"	"	599 51	
	All	9	"	"	640 00	
	All fracl	1	11 N	19 W	632 38	
	All fracl	3	"	"	635 20	
	All fracl.	5	"	"	638 56	
	NE ¼	7	"	"	160 00	
	N ½	9	"	"	320 00	
	Forward,				24,793 10	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

2 G. L. 79 R.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Brought forward,				24,793	10	
	All	11	11 N	19 W	640	00	
	N ½	13	"	"	320	00	
	All fracl	31	12 N	10 W	523	65	
	All fracl	33	"	"	517	57	
	All fracl	35	"	"	514	40	
	All fracl	31	12 N	11 W	553	28	
	All fracl	33	"	"	542	46	(542 40 on map.)
	All fracl	35	"	"	532	38	
	All fracl	31	12 N	12 W	568	03	
	All fracl	33	"	"	554	40	
	All fracl	35	"	"	551	98	
	All fracl	31	12 N	13 W	614	76	(624 76 on map.)
	All fracl	31	12 N	14 W	600	13	
	All fracl	33	"	"	596	36	
	All fracl	35	"	"	600	04	
	Lots 1, 2, 3, 7, 11, 12, 13, S ½ of NE ¼; W ½ of SE ¼	31	12 N	16 W	472	72	
	Lot 4 in NW ¼; S ½ of NW ¼; S ½	33	"	"	424	24	
	All fracl	35	"	"	575	64	
	All fracl	25	12 N	17 W	397	02	
	Fracl. S ½ of SE ¼; Fracl. S ½ of SW ¼	25	12 N	19 W	152	38	
	Fracl. S ½ of SE ¼; Fracl. S ½ of SW ¼	27	"	"	153	48	
	Fracl. S ½ of SE ¼; Fracl. S ½ of SW ¼	29	"	"	151	56	
	All fracl	31	"	"	641	76	
	Forward,				35,991	34	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

2 G. L 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.
	Brought forward,				35,991 34	
All		33	12 N	19 W	640 00	
All		35	"	"	640 00	
Fracl. S ½ of SE ¼; Fracl. S ½ of SW ¼		25	"	20 W	150 62	
Fracl. S ½ of SE ¼; Fracl. S ½ of SW ¼		27	"	"	151 16	
Fracl. S ½ of SE ¼; Fracl. S ½ of SW ¼		29	"	"	151 80	
All		33	"	"	640 00	
All		35	"	"	640 00	
					39,004 92	$488 00

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

G. 399. 5-2-89—500.

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company, that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from a point in the northeast one-fourth, section 5, township 30 south, range 29 east, Mt. Diablo base and meridian to Mojave, for which a grant of lands was made by the acts of Congress approved July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of sixty-one and sixty-six one-hundredths (61.66) miles, being for the seventh and tenth sections of said road, starting from a point in northeast one-fourth, section 5, township 30 south, range 29 east, Mt. Diablo base and meridian, and ending at a point in northeast one-fourth, section 17, township 11 north, range 12 west, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this fifteenth (15th) day of May, 1888. Witness my hand and notarial seal.

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, in the State of California.

[Seal]

No. 31. Office of the Assistant Treasurer U. S.
San Francisco, Cal., August 1, 1888.

I certify that Jerome Madden, San Francisco, Cal., this day deposited to the credit of the Treasurer of the United States seventeen hundred and fifty-five—*22* dollars on account of lands selected by the S. P. R. R. Co., in its list No. 42 granted limits Los Angeles Dist., Cala. survey. $1,316.42 O. W. and Sta. $438.80. For which I have signed triplicate receipts.

(Signed) S. H. BROOKS,

$1,755.22. Assistant Treasurer U. S.

(Triplicate to be retained by the depositor.)

(Written across face of above the word "Copy.")

United States Land Office.

June 1st, 1888.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct, *except as noted in red ink*

opposite tracts named; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, preemption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of four hundred and eighty-eight dollars ($488.00) in full payment and discharge of said fees.

H. W. PATTON,
Register.

J. H. POLK,
Receiver.

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit 187, Stephen Potter, Special Examiner," and find it to be a full, true and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 189.

United States Land Office.

Los Angeles, California, April 10, 1893.

List No. 77.

Lands Selected

by the

Southern Pacific Railroad Company.

Granted Limits.

Main Line.

G L 90 (10-30-95-250)
(Old G. 153.)

Certificate.

Office of the Southern Pacific Railroad Company,
San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the seventh day of April, A. D. 1893.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.
[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the tenth (10th) and eleventh (11th) sections (eighty-one and sixty-six hundredths (81.66-100) miles) of the same, commencing at a point in southeast one-fourth, section 33, township 30 south, range 31 east, Mt. Diablo base and meridian, and ending at a point in northeast one-fourth of section 6,

township 10 north, range 6 west, San Bernardino base and meridian, which said section ten (10) of road and telegraph has been, and said section eleven (11) has not been, duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selection being particularly described as follows.

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad Company.

G. 130 (4-5-92-500)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	Area. .100	Fees of Register and Receiver.
	All fracl	1	8 N	9 W	641	82	
	All fracl	3	"	"	644	06	
	All fracl	5	"	"	644	28	
	All fracl	7	"	"	628	52	
	All	9	"	"	640	00	
	All	11	"	"	640	00	
	All	13	"	"	640	00	
	All	15	"	"	640	00	
	All	17	"	"	640	00	
	All fracl	1	"	10 W	641	00	
	All fracl	3	"	"	639	16	
	All	9	"	"	640	00	
	All	11	"	"	640	00	
	All fracl	1	"	11 W	643	00	
	All fracl	3	"	"	650	58	
	All fracl	5	"	"	651	42	
	All fracl	1	"	12 W	639	90	
	All fracl	3	"	"	635	84	
	All fracl	5	"	"	635	88	
	All fracl	7	"	"	633	78	
	All	9	"	"	640	00	
	All	11	"	"	640	00	
	All	17	"	"	640	00	
	All fracl	1	"	13 W	637	98	
	Carried forward,				15,367	22	

West of San Bernardino Principal Meridian.

REMARKS.

650 60/100 on plat.

NOTE.—Matter printed in italic is red in original.

2 G. 130. (4-5-92-500)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				15,367 22	
	All fracl	3	8 N	13 W	637 02	
	All fracl	5	"	"	645 07	
	All fracl	7	"	"	651 52	
	All	9	"	"	640 00	
	All	11	"	"	640 00	
	All	13	"	"	640 00	
	All	15	"	"	640 00	
	All	17	"	"	640 00	
	All fracl	19	"	"	642 40	
	All	21	"	"	640 00	
	All	27	"	"	640 00	
	All	29	"	"	640 00	
	Fracl. W ½	31	"	"	309 94	
	All fracl	1	"	14 W	638 40	
	All fracl	3	"	"	639 42	
	All fracl	5	"	"	641 44	
	All	9	"	"	640 00	
	All	11	"	"	640 00	
	All	13	"	"	640 00	
	All	15	"	"	640 00	
	All	17	"	"	640 00	
	All fracl	1	9 N	9 W	635 10	
	All fracl	3	"	"	641 60	
	Carried forward,				29,769 13	

West of San Bernardino Principal Meridian.

REMARKS.

3 G 130. (4-5-92-500.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.
	Brought forward,				29, 769 13	
	All fracl.	5	9 N	9 W	641 28	
	All fracl.	7	"	"	640 48	
	All	9	"	"	640 00	
	All	11	"	"	640 00	
	All	13	"	"	640 00	
	All	15	"	"	640 00	
	All	17	"	"	640 00	
	All fracl.	19	"	"	634 07	
	All	21	"	"	640 00	
	All	23	"	"	640 00	
	All	25	"	"	640 00	
	All	27	"	"	640 00	
	All	29	"	"	640 00	
	All fracl.	31	"	"	631 09	
	All	33	"	"	640 00	
	All	35	"	"	640 00	
	All fracl.	1	9 N	10 W	643 52	
	All fracl.	3	"	"	649 18	
	All fracl.	5	"	"	650 20	
	All fracl.	7	"	"	642 30	
	All	9	"	"	640 00	
	All	11	"	"	640 00	
	All	13	"	"	640 00	
	Carried forward,				44,501 25	

West of San Bernardino Principal Meridian.

REMARKS.

634 04/100 on plat.

4 G. 130. (4-5-92-500.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	Name of Range	Area. Acres .100.	Fees of Register and Receiver.
	Brought forward,				44,501 25	
All		15	9 N	10 W	640 00	
All		17	"	"	640 00	
All fracl.		19	"	"	634 40	
All		21	"	"	640 00	
All		23	"	"	640 00	
All		25	"	"	640 00	
All		27	"	"	640 00	
All		29	"	"	640 00	
All fracl.		31	"	"	627 60	
All		33	"	"	640 00	
All		35	"	"	640 00	
All fracl.		1	9 N	11 W	645 34	
All fracl.		3	"	"	649 98	
All fracl.		5	"	"	646 04	
All fracl.		7	"	"	652 84	
All		9	"	"	640 00	
All		11	"	"	640 00	
All		13	"	"	640 00	
All		15	"	"	640 00	
All		17	"	"	640 00	
All fracl.		19	"	"	650 08	
All		21	"	"	640 00	
All		23	"	"	640 00	
	Carried forward,				59,247 53	

West of San Bernardino Principal Meridian.

REMARKS.

5 G. 130. (4-5-92-500.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				59,247 53	
All		25	9 N	11 W	640 00	
All		27	"	"	640 00	
All		29	"	"	640 00	
All fracl.		31	"	"	647 50	
All		33	"	"	640 00	
All		35	"	"	640 00	
All fracl.		1	9 N	12 W	642 13	
All fracl.		3	"	"	642 92	
All fracl.		5	"	"	640 64	
All fracl.		7	"	"	650 52	
All		9	"	"	640 00	
All		11	"	"	640 00	
All		13	"	"	640 00	
All		15	"	"	640 00	
All		21	"	"	640 00	
All		23	"	"	640 00	
All		25	"	"	640 00	
All		27	"	"	640 00	
All		29	"	"	640 00	
All fracl.		31	"	"	634 46	
All		33	"	"	640 00	
All		35	"	"	640 00	
All fracl.		1	9 N	13 W	640 38	
	Carried forward,				73,986 08	

West of San Bernardino Principal Meridian.

REMARKS

6 G. 130. (4-5-92-500.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought Forward,				73,986 08	
	All fracl.	3	9 N	13 W	640 38	
	N ½ of SE ¼; NE ¼ and fracl. W ½	7	"	"	572 04	
	All	9	"	"	640 00	
	All	11	"	"	640 00	
	All	13	"	"	640 00	
	All	17	"	"	640 00	
	All fracl.	19	"	"	651 38	
	All fracl.	31	"	"	655 74	
	All fracl.	19	9 N	14 W	637 22	
	All	21	"	"	640 00	
	All	23	"	"	640 00	
	All	25	"	"	640 00	
	All	27	"	"	640 00	
	All	29	"	"	640 00	
	All fracl.	31	"	"	631 28	
	All	33	"	"	640 00	
	All	35	"	"	640 00	
	All	17	9 N	15 W	640 00	
	E ½ of NW ¼ E ½ of SW ¼ and E ½	19	"	"	480 00	
	S ½	21	"	"	320 00	
	All	23	"	"	640 00	
	All	25	"	"	640 00	
	All	27	"	"	640 00	
	Carried forward,				88,174 12	

West of San Bernardino Principal Meridian.

REMARKS.

638 78/100 on Plat.

7 G. 130. (4-5-92-500.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought Forward,				88,174 12	
	All	29	9 N	15 W	640 00	
	All	33	"	"	640 00	
	All	35	"	"	640 00	
	All	23	9 N	16 W	640 00	
	All	23	10 N	9 W	640 00	
	All	25	"	"	640 00	
	All	29	"	"	640 00	
	All Fracl	31	"	"	649 94	
	All	33	"	"	640 00	
	All	35	"	"	640 00	
	All	25	10 N	10 W	640 00	
	All	27	"	"	640 00	
	All	29	"	"	640 00	
	All Fracl	31	"	"	643 20	
	All	33	"	"	640 00	
	All	35	"	"	640 00	
	All	25	10	11 W	640 00	
	All	27		"	640 00	
	All	29	"	"	640 00	
	All Fracl	31	"	"	654 28	
	All	33	"	"	640 00	
	All	35	"	"	640 00	
	All	25	10 N	12 W	640 00	
	Carried Forward,				102,921 54	

West of San Bernardino Principal Meridian.

REMARKS.

8 G. 130. (4-5-92-500.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Brought Forward,				102,921	54	
All		27	10 N	12 W	640	00	
All		29	"	"	640	00	
All Fracl		31	"	"	653	98	
All		33	"	"	640	00	
All		35	"	"	640	00	
	Total,				106,135	52	$1,328 00

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

City and County of San Francisco. }
State of California. } ss.

I, Jerome Madden, being duly sworn, depose and say: That I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from a point in southeast one-fourth, section 33, township 30 south, range 31 east, Mt. Diablo base and meridian, to a point in northeast one-fourth, section 6, township 10 north, range 6 west, San Bernardino base and meridian, for which a grant of lands was made by the acts of Congress approved July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of eighty-one and sixty-six hundredths (81.66-100) miles, being for the tenth (10th) and eleventh (11th) sections of said road, starting from a point in southeast one-quarter, section 33, township 30 south, range 31 east, Mt. Diablo base and meridian, and ending at a point in northeast one-quarter section 6, township 10 north, range 6 west, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me, this eighth (8th) day of April, 1893. Witness my hand and notarial seal.

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, in the State of California.

[Seal]

United States Land Office.

Los Angeles, Cal., April 10, 1893.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, ad-

dressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of thirteen hundred and twenty-eight ($1,328.00-100) dollars in full payment and discharge of said fees.

W. H. SEAMANS,
Register.

———— ————,
Receiver.

(8-23-93-250) G. 163.

San Francisco, Cal., 7th April, 1893.

The Southern Pacific Railroad Company pays under protest the expense of surveying the lands selected in the within list, because it claims to be exempt from such payment by provisions of the grant of lands to it by Congress.

JEROME MADDEN,
Land Agent, Southern Pacific R. R. Co.

United States Surveyor-General's Office.
San Francisco, California,
April 8, 1893.

I, Wm. H. Pratt, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 157, dated April 8, 1893, to the credit of the United States, showing that the sum of $3,582.08 has been deposited as cost of survey, and $1,194.-02 for office work, and that the said sums are the correct

amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	$3,582.08
Office work	$1,194.02
	$4,776.10

In testimony whereof, I have hereunto set my hand and official seal.

WM. H. PRATT,
Surveyor General.

[Seal]

(Copy)

United States Land Office.
Los Angeles, Cal., May 6, 1893.

Jerome Madden, Esq.,
Land Agent Southern Pacific Railroad Company,
San Francisco, Cal.

Sir:

Referring to lists Nos. 74, 75, 76 and 77, of lands selected by the Southern Pacific R. R. Co., duplicates of which are returned to you this day without the signature of Mr. Geo. W. Bryant, the receiver, who died on May 1, 1893. These lists were approved by this office before his death, but remained unsigned by him owing to his physical disability. The said lists have been placed of record in this office and forwarded to the general land office at Washington, D. C.

Very respectfully,

W. H. SEAMANS,
Register.

(Copy)

United States Land Office, Los Angeles, Cal.
May 6, 1893.

Hon. Commissioner General Land Office,
Wasington, D. C.

Sir:

I transmit herewith list No. 77 of lands selected by the Southern Pacific R. R. Co., granted limits, main line; said list having been placed of record in this office.

Very respectfully,

W. H. SEAMANS,
Register.

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit, No. 189. Stephen Potter, Special Examiner," and find it to be a full, true and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 191.

United States Land Office.

Los Angeles, California, August 11, 1893.

List No. 80.

Lands Selected

by the

Southern Pacific Railroad Company.

Granted Limits.

Main Line.

G L 90 (10-30-95-250)
(Old G 153)

Certificate.

Office of the Southern Pacific Railroad Company,

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand

and affixed the corporate seal of the said Southern Pacific Railroad Company, the ninth day of May, A. D. 1893.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.
[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and

the location of the line of route of the railroad and telegraph of said company; being in part for the eleventh (11th) section (fifty (50.00) miles) of the same, commencing at Mojave, and ending at a point in northeast one-quarter, section 6, township 10 north, range 6 west, San Bernardino base and meridian which said section of road and telegraph has not yet been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selection being particularly described as follows.

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad Company.

1 G. 130. (4-5-92-500)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	All fracl.	1	7 N	9 W	643 20	
	All fracl.	3	"	"	645 98	
	All fracl.	5	"	"	646 46	
	All fracl.	7	"	"	632 38	
	All	9	"	"	640 00	
	All	11	"	"	640 00	
	All	13	"	"	640 00	
	All	15	"	"	640 00	
	All	17	"	"	640 00	
	All fracl.	1	7 N	10 W	642 44	
	All fracl.	3	"	"	645 28	
	All fracl.	5	"	"	642 99	
	All fracl.	7	"	"	633 82	
	All	9	"	"	640 00	
	All	11	"	"	640 00	
	All	13	"	"	640 00	
	All	15	"	"	640 00	
	All	17	"	"	640 00	
	All fracl.	1	7 N	11 W	641 60	
	All fracl.	3	"	"	642 20	
	All	11	"	"	640 00	
	All	13	"	"	640 00	
	All	15	"	"	640 00	
	Carried forward.				14,736 35	

West of San Bernardino Principal Meridian.

REMARKS.

2 G. 130. (4-5-92-500)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Brought forward,				14,736	35	
All fracl.		5	7 N	12 W	644	14	
All fracl.		7	"	"	644	38	
All fracl.		1	7 N	13 W	639	00	
E ½		11	"	"	320	00	
All		13	"	"	640	00	
All fracl.		19	8 N	9 W	627	00	
All		21	"	"	640	00	
All		23	"	"	640	00	
All		25	"	"	640	00	
All		27	"	"	640	00	
All		29	"	"	640	00	
All fracl.		31	"	"	627	58	
All		33	"	"	640	00	
All		35	"	"	640	00	
All		13	8 N	10 W	640	00	
All		15	"	"	640	00	
All		17	"	"	640	00	
All fracl.		19	"	"	631	52	
All		21	"	"	640	00	
All		23	"	"	640	00	
All		25	"	"	640	00	
All		27	"	"	640	00	
All		29	"	"	640	00	
	Carried forward,				29,109	97	

West of San Bernardino Principal Meridian.

REMARKS.
644.16 acres on plat.

NOTE.—Matter printed in italic is red in original.

3 G. 130. (4-5-92-500)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Brought forward,				29,109	97	
All	fracl.	31	8 N	10 W	633	60	
All		33	"	"	640	00	
All		35	"	"	640	00	
All	fracl.	7	8 N	11 W	653	28	
All		9	"	"	640	00	
All		13	"	"	640	00	
All		15	"	"	640	00	
All		17	"	"	640	00	
All		21	"	"	640	00	
All		23	"	"	640	00	
All		25	"	"	640	00	
All		27	"	"	640	00	
All		33	"	"	640	00	
All		35	"	"	640	00	
All		13	8 N	12 W	640	00	
All		15	"	"	640	00	
All	fracl.	19	"	"	634	88	
All		21	"	"	640	00	
All		23	"	"	640	00	
All		27	"	"	640	00	
All		29	"	"	640	00	
All	fracl.	31	"	"	642	28	
All		33	"	"	640	00	
	Carried forward,				43,834	01	

West of San Bernardino Principal Meridian.

REMARKS.

4 G. 130. (4-5-92-500)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.
	Brought forward,				43,834 01	
All		23	8 N	13 W	640 00	
All		25	"	"	640 00	
All		35	"	"	640 00	
			Total,		45,754 01	$572 00

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: That I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to a point in northeast one quarter, section 6, township 10 north, range 6 west, San Bernardino base and meridian, for which a grant of lands was made by the acts of Congress approved July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of fifty (50.00) miles, being for eleventh (11th) section of said road, starting from a point in northeast one-quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in northeast one-quarter, section 6, township 10 north, range 6 west, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me, this tenth (10th) day of May, 1893. Witness my hand and notarial seal.

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, in the State of California.

[Seal]

United States Land Office.

Los Angeles, Cal., August 11, 1893.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the sull sum of five hundred and seventy-two

($572.00) dollars in full payment and discharge of said fees.

W. H. SEAMANS,
Register.
ENOCH KNIGHT,
Receiver.

(8-23-93-250) G. 163.

San Francisco, Cal., 9th May, 1893.

The Southern Pacific Railroad Company offers to pay under protest the expense of surveying the lands selected in the within list, because it claims to be exempt from such payment by provisions of the grant of lands to it by Congress.

JEROME MADDEN,
Land Agent, Southern Pacific Railroad Company.

United States Surveyor General's Office,
San Francisco, California.
————————, 189--.

I, ——— ———, surveyor general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. ———, dated ———— —, ——, to the credit of the United States, showing that the sum of $———— has been deposited as cost of survey, and $———— for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey ....$———

Office work .....$———

In testimony whereof, I have hereunto set my hand and official seal.

———— ————.

Surveyor General.

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 191. Stephen Potter, Special Examiner," and find it to be a full, true, and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,

Special Examiner.

Defendant's Exhibit No. 193.

List No. 1.

Lands selected by the

Southern Pacific Railroad Company,

In the Los Angeles Land District,

State of California.

Granted Limits.

(4-15-96-500)

Office of the Southern Pacific Railroad Company,
San Francisco, California, January 19, 1876.

State of California,
City and County of San Francisco. } ss.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Benjamin B. Redding was appointed land agent of the said Southern Pacific Railroad Company, by the board of directors of said company, at a regular meeting held on the third (3rd) day of July, A. D. 1871, and that since that time he has been contin--ously and is now the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the nineteenth day of January, A. D. 1876.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled "An act granting lands

to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the first (1st) section (fifty (50) miles) of the same, commencing at a point in northwest one-quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at the termination of the fiftieth mile therefrom at a point in northeast one-quarter, section 27, township 1 south, range 9 west, San Bernardino base and meridian, which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

BENJAMIN B. REDDING,
Land Agent of the Southern Pacific Railroad Company.

1 G. 130. (4-5-92-500)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	SE ¼	19	1 N	8 W	160 00	2 00
	Frac. NW ¼	31	"	"	161 20	2 00
	Frac. SW ¼	31	"	"	160 40	2 00
	E ½ of SW ¼	13	"	11 W	80 00	1 00
	Lots 1, 2 and 3	15	"	"	71 12	1 00
	E ½ of NE ¼	15	"	"	80 00	1 00
	NE ¼ of NW ¼	15	"	"	40 00	50
	W ½ of NW ¼	15	"	"	80 00	1 00
	E ½ of SE ¼	15	"	"	80 00	1 00
	NW ¼ of SE ¼	15	"	"	40 00	50
	NW ¼ of SW ¼	15	"	"	40 00	50
	Lots 3 and 4	17	"	"	28 77	50
	N ½ of SE ¼	17	"	"	80 00	1 00
	S ½ of NE ¼	17	"	"	80 00	1 00
	SE ¼ of NW ¼	17	"	"	40 00	50
	Lots 1, 3 and 4	23	"	"	82 11	1 00
	NW ¼ of NE ¼	23	"	"	40 00	50
	SW ¼ of NW ¼	23	"	"	40 00	50
	Lot 1	1	2 N	15 W	37 72	50
	Lot 2	1	"	"	36 30	50
	Lot 3	1	"	"	39 06	50
	Lot 4	1	"	"	28 49	50
	Forward—Acres,				*1,625 17*	*$19 50*

NOTE.—Matter printed in italics is red in original.

West of San Bernardino Principal Meridian.

REMARKS.

2 G. 130. (4-5-92-500)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area Acres	.100	Fees of Register and Receiver.
	Forward—Acres,				*1,525*	*17*	*$19 00*
Lot 5		1	2 N	15 W	44	34	50
Lot 6		1	"	"	44	18	50
E ½ of NE ¼		25	3 N	15 W	80	00	1 00
Lot 2		25	"	"	34	13	50
Lot 3		25	"	"	29	96	50
All of fracl		1	4 N	13 W	632	60	8 00
NW ¼ of SW ¼		11	"	"	40	00	50
SW ¼ of SE ¼		11	"	"	40	00	50
E ½		13	"	"	320	00	4 00
S ½ of NE ¼		15	"	"	80	00	1 00
Fracl. SW ¼		31	5 N	12 W	164	41	2 00
S ½		25	5 N	13 W	320	00	4 00
All of		35	"	"	640	00	8 00
	Forward—Acres,				*3,994*	*79*	*$50 50*

NOTE.—Matter printed in italic is red in original.

West of San Bernardino Principal Meridian.

REMARKS.

3 G. 130. (4-5-92-500)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Forward—Acres				*3,994 79*	*$50 50*
Lot 1		1	1 S	11 W	14 97	50
NE ¼		13	"	"	160 00	2 00
E ½ of NW ¼		13	"	"	80 00	1 00
Lots 1, 2, 3, 4, 5 and 6		13	"	"	161 54	2 00
N ½ of SW ¼		13	"	"	80 00	1 00
Lots 1 and 5		3	1 S	12 W	19 76	50
NE ¼ of SW ¼		7	"	"	40 00	50
SE ¼ of NW ¼		11	"	"	40 00	50
NE ¼ of SW ¼		11	"	"	40 00	50
Lot 2		11	"	"	3 50	50
NE ¼		15	"	"	160 00	2 00
NE ¼		17	"	"	160 00	2 00
E ½ of SE ¼		17	"	"	80 00	1 00
N ½ of SE ¼		19	"	"	80 00	1 00
E ½ of NE ¼		31	"	"	80 00	1 00
E ½ of SE ¼		31	"	"	80 00	1 00
Fracl. NW ¼		31	"	"	167 61	2 00
Lot 1		11	1 S	13 W	19	50
NE ¼ of NE ¼		13	"	"	40 00	50
SE ¼ of SE ¼		13	"	"	40 00	50
Lot 1 of NE ¼; lot 4 of SE ¼		13	"	"	19 28	50
	Forward—Acres,				*5,541 64*	*$71 50*

NOTE—Matter printed in italic is red in original.

West of San Bernardino Principal Meridian.

REMARKS.

4 G. 130 (4-5-92-500)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Forward—Acres,				*5,541 64*	*$71 50*
	E ½ of SE ¼	3	1 S	14 W	80 00	1 00
	Lots 1 and 2	3	"	"	44 53	50
	N ½ of SE ¼	7	"	"	80 00	1 00
	SW ¼ of SE ¼	7	"	"	40 00	50
	Lot 3	7	"	"	33 33	50
	SE ¼	11	"	"	160 00	2 00
	NW ¼ of NW ¼	11	"	"	40 00	50
	NW ¼	13	"	"	160 00	2 00
	Lots 1, 2, 3 and 4	23	"	"	51 12	50
	Lot 1	3	2 S	11 W	21 35	50
	NE ¼ of SE ¼	9	"	"	40 00	50
	S ½ of SE ¼	9	"	"	80 00	1 00
	Lot 1	15	"	"	39 97	50
	NW ¼ of NE ¼	15	"	"	40 00	50
	S ½ of NE ¼	15	"	"	80 00	1 00
	NW ¼ of NW ¼	15	"	"	40 00	50
	S ½ of NW ¼	15	"	"	80 00	1 00
	SW ¼	15	"	"	160 00	2 00
	N ½ of SE ¼	15	"	"	80 00	1 00
	NE ¼ of NW ¼	21	"	"	40 00	50
	E ½ of SE ¼	21	"	"	80 00	1 00
	All of	23	"	"	640 00	8 00
	Forward—Acres,				*7,651 94*	*$98 00*

NOTE—Matter printed in italic is red in original.

West of San Bernardino Principal Meridian.

REMARKS.

5 G. 130. (4-5-92-500)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Forward—Acres,				*7,651 94*	*$98 00*
	N ½	25	2 S	11 W	320 00	4 00
	SE ¼	25	"	"	160 00	2 00
	E ½ of SW ¼	25	"	"	80 00	1 00
	SW ¼ of SW ¼	25	"	"	40 00	50
	NE ¼	27	"	"	160 00	2 00
	Lot 1	33	"	"	02	50
	Lots 1 and 2	3	2 S	13 W	4 00	50
	Lot 1	5	"	"	2 00	50
	Lot 3 of SW ¼	31	"	"	42 01	50
	Lots 1 and 2	33	"	"	44 51	50
	S ½ of NE ¼	11	2 S	14 W	80 00	1 00
	SW ¼	13	"	"	160 00	2 00
	Lots 1, 2, 3 and 4	17	"	"	139 36	1 50
	Lots 5, 6, 7 and 8	17	"	"	42 21	50
	Lots 9 and 10	17	"	"	51 02	50
	E ½ of SE ¼	17	"	"	80 00	1 00
	S ½ of SW ¼	17	"	"	80 00	1 00
	NE ¼	19	"	"	160 00	2 00
	Lots 1 and 2	19	"	"	43 28	50
	Lots 3 and 5	19	"	"	38 29	50
	Lots 6 and 7	19	"	"	72 89	1 00
	Forward—Acres				*9,451 53*	*$121 50*

NOTE—Matter printed in italic is red in original.

West of San Bernardino Principal Meridian.

REMARKS.

6 G. 130. (4-5-92-500)

Railroad List. South of Base Line and West of San Bernardino Principal Meridian.

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Forward—Acres,				*9,451 53*	*$121 50*
	SE ¼ of NW ¼	19	2 S	14 W	40 00	50
	Lots 4, 7 and 8	21	"	"	73 70	1 00
	N ½ of NW ¼	21	"	"	80 00	1 00
	NE ¼	21	"	"	160 00	2 00
	SE ¼ of SE ¼	5	3 S	13 W	40 00	50
	Lot 1	7	"	"	42 28	50
	Lots 1 and 2 of NW ¼	9	"	"	40 59	50
	Lots 3 and 4 of SW ¼	9	"	"	39 52	50
	NE ¼ of SE ¼	17	"	"	40 00	50
	Lot 3 of SE ¼	17	"	"	32 78	50
	Total Acres,				*10,040 40*	*$129 00*

NOTE.—Matter printed in italic is red in original.

G. 399. 5-2-89-500.

State of California, }
City and County of San Francisco. } ss.

I, Benjamin B. Redding, being duly sworn, depose and say: That I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from San Fernando to Spadra, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of fifty (50) miles, being for the first (1st) section of said road, starting from a point in the northwest one-quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at the termination of the fiftieth mile therefrom, at a point in the northeast one-quarter, section 27, township 1 south, range 9 west, San Bernardino base and meridian.

BENJAMIN B. REDDING. [Seal]

Sworn to and subscribed before me this twentieth (20th) day of January, 1876.

CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

[Seal]

United States Land Office.

Los Angeles, Cal., January 28, 1876.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Benjamin B. Redding, the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of one hundred and twenty-

nine ($129.00) dollars in full payment and discharge of said fees.

ALFRED JAMES,
Register.

J. W. HAVERSTICK,
Receiver.

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 193. Stephen Potter, Special Examiner," and find it to be a full, true and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 195.

List No. 2.

Lands selected by the

Southern Pacific Railroad Company,

In the Los Angeles Land District,

State of California.

Granted Limits.

Office of the Southern Pacific Railroad Company.

San Francisco, California, June 26, 1877.

State of California,
City and County of San Francisco. } ss.

I, Joseph L. Willcutt, secretary of the Southern Pacif-

ic Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously and is now the land agent of the said "Southern Pacific Railroad Company."

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the twenty-sixth day of June, A. D. 1877.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.
[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific

Coast," and the further act approved July 25, 1868, entitled, "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the first, second and third, fifty mile sections (one hundred and fifty (150) miles) of the same commencing at a point in northwest one quarter, section 3, township 2 north, range 15 west (San Bernardino base and meridian) and ending at a point in southwest one-quarter, section 24, township 5 south, range 7 east (San Bernardino base and meridian), which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad Company.

over.

1 G. 130. (4-5-92-500)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	NW ¼	13	1 N	8 W	160 00	2 00
	S ½	21	"	"	320 00	4 00
	N ½	23	"	"	320 00	4 00
	Lots 1, 2 and 3	25	"	"	67 51	1 00
	All	29	"	"	640 00	8 00
	S ½	33	"	"	320 00	4 00
	All	35	"	"	640 00	8 00
	Lots 1 and 2 of NE ¼	3	1 N	12 W	80 00	1 00
	Lots 3, 4 and 5 of NW ¼	"	"	"	100 28	1 00
	NE ¼ of SE ¼	"	"	"	40 00	50
	Lots 1 to 9, inclusive	5	"	"	264 48	3 50
	Lots 1 to 5, "	11	"	"	131 75	1 50
	Lots 1 and 2	13	"	"	47 20	50
	Lot 4	13	"	"	23 06	50
	All of fracl.	3	1 N	14 W	619 77	8 00
	Lots 1 and 2	5	"	"	7 39	50
	All of fracl.	9	"	"	542 24	7 00
	Lots 1, 2, 3 and 4	11	"	"	54 24	1 50
	W ½ of NW ¼	"	"	"	80 00	
	Lot 1	15	"	"	2 92	50
	All of fracl.	17	2 N	13 W	639 98	8 00
	Carried forward, Acres,				5,100 82	$85 00

West of San Bernardino Principal Meridian.

REMARKS.

G. 130. (4-5-92-500)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward, acres,				5,100 82	$65 00
	All of fracl.	21	2 N	13 W	367 68	4 50
	All of	25	"	"	640 00	8 00
	E ½ of NE ¼	27	"	"	80 00	1 00
	Lots 1, 2 and 3	"	"	"	76 32	1 00
	N ½ of NE ¼	35	"	"	80 00	1 00
	Lots 1, 2, 3 and 4	"	"	"	101 51	1 50
	Lots 1, 2, 3 and 4	21	2 N	14 W	101 68	1 50
	S ½ of SE ¼	"	"	"	80 00	1 00
	S ½ of SW ¼	"	"	"	80 00	1 00
	Lots 1 and 2	27	"	"	79 94	1 00
	NW ¼ of SW ¼	"	"	"	40 00	50
	E ½ of NE ¼	29	"	"	80 00	1 00
	Lots 1, 2, 3 and 4	"	"	"	86 48	1 00
	All	33	"	"	640 00	8 00
	Carried forward—Acres,				7,634 43	$97 00

West of San Bernardino Principal Meridian.

REMARKS.

3 G. 130. (4-5-92-500)

Railroad List. **South of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver
	Brought forward—Acres,				7,634 43	$97 00
	All of fracl.	7	1 S	2 W	646 24	8 00
	All of	17	"	"	640 00	8 00
	All of fracl.	19	"	"	641 60	8 00
	N ½ of NE ¼	21	"	"	80 00	1 00
	N ½ of NW ¼	"	"	"	80 00	1 00
	SW ¼ of NW ¼	"	"	"	40 00	50
	W ½ of SW ¼	"	"	"	80 00	1 00
	SE ¼ of SW ¼	"	"	"	40 00	50
	SE ¼	25	"	"	160 00	2 00
	E ½ of SW ¼	"	"	"	80 00	1 00
	S ½ of NE ¼	29	"	"	80 00	1 00
	SE ¼	"	"	"	160 00	2 00
	W ½	31	"	"	320 00	4 00
	W ½	33	"	"	320 00	4 00
	SE ¼	"	"	"	160 00	2 00
	SW ¼	35	"	"	160 00	2 00
	All of fracl.	1	1 S	3 W	649 98	8 00
	Fracl. E ½ of NE ¼	3	"	"	86 35	1 00
	SW ¼ of NE ¼	"	"	"	40 00	50
	Fracl. N ½ of NW ¼	"	"	"	92 20	1 00
	Fracl. E ½	5	"	"	330 05	4 00
	Carried forward—Acres,				12,520 85	$157 50

West of San Bernardino Principal Meridian.

REMARKS.

4 G. 130. (4-5-92-500)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward—Acres,				12,520 85	$157 50
	All of Sec...	9	1 S	3 W	640 00	8 00
	All	11	"	"	640 00	8 00
	All	13	"	"	640 00	8 00
	S ½ of SE ¼	15	"	"	80 00	1 00
	S ½ of SW ¼	"	"	"	80 00	1 00
	N ½	23	"	"	320 00	4 00
	All of fracl.	31	"	"	636 00	8 00
	All of	33	"	"	640 00	8 00
	All of	35	"	"	640 00	8 00
	All of fracl.	7	1 S	4 W	567 04	7 00
	All of fracl.	19	"	"	480 60	6 00
	All of fracl.	33	"	"	532 10	6 50
	Fracl. NE ¼	35	"	"	157 97	2 00
	Lots 3 and 4 of SW ¼	25	1 S	5 W	31 41	50
	Fracl. NW ¼	31	"	"	161 68	2 00
	Lots 1 and 2 of NE ¼	33	"	"	67 17	1 00
	Fracl. NE ¼	5	1 S	6 W	167 00	2 00
	NW ¼	9	"	"	160 00	2 00
	Fracl. SW ¼	19	"	"	144 81	2 00
	NW ¼	29	"	"	160 00	2 00
	Carried forward—Acres,				19,466 63	$244 50

West of San Bernardino Principal Meridian.

REMARKS.

5 G. 130. (4-5-92-500)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.
	Brought forward—Acres,				19,466 63	$244 50
	Fracl. SW ¼ of NW ¼	31	1 S	6 W	31 80	50
	Fracl. W ½ of SW ¼	"	"	"	62 64	1 00
	NW ¼	35	"	"	160 00	2 00
	All of	21	1 S	7 W	640 00	8 00
	NW ¼ of NW ¼	23	"	"	40 00	50
	W ½	27	"	"	320 00	4 00
	N ½	29	"	"	320 00	4 00
	N ½ of SE ¼	"	"	"	80 00	1 00
	Lots 3 and 4 of SE ¼	"	"	"	10 05	50
	NE ¼ of SW ¼	"	"	"	40 00	50
	Lot 2 of SW ¼	"	"	"	9 75	
	E ½	33	"	"	320 00	4 00
	E ½ of NW ¼	"	"	"	80 00	1 00
	Lots 1 and 2 of NW ¼	"	"	"	32 00	50
	Lots 3 and 4 of SW ¼	"	"	"	32 00	50
	E ½ of SW ¼	"	"	"	80 00	1 00
	All of fracl.	1	1 S	8 W	640 60	8 00
	All of fracl.	3	"	"	641 60	8 00
	All of fracl.	5	"	"	633 31	8 00
	E ½ of NE ¼	9	"	"	80	1 00
	NW ¼ of NW ¼, 40; Lot 1 in NW ¼, 16.69	"	"	"	56 69	1 00
	Carried forward—Acres,				23,777 07	$299 50

West of San Bernardino Principal Meridian.

REMARKS.

State Selection of Jan'y 18, '70. Canceled by Com'r March 14, 1877.

6 G. 130. (4-5-92-500.)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward—Acres,				23,777 07	$299 50
	Lots 3 and 4 of SE ¼	9	1 S	8 W	34 85	50
	All of	11	"	"	640 00	8 00
	NE ¼ of NE ¼; S ½ of NE ¼	15	"	"	120 00	1 50
	SE ¼	"	"	"	160 00	2 00
	Lots 1, 2, 3 and 4	"	"	"	136 00	2 00
	Lots 1 and 2	21	"	"	32 10	50
	N ½ of NE ¼	23	"	"	80 00	1 00
	Lots 1, 2, 3 and 4	25	"	"	138 34	1 50
	S ½ of SE ¼	27	"	"	80 00	1 00
	S ½ of SW ¼	"	"	"	80 00	1 00
	Lots 1 and 2	33	"	"	58 86	1 00
	Lots 1, 2, 3 and 4	35	"	"	30 26	50
	Lot 1 of NW ¼	7	1 S	11 W	40 00	50
	Lots 5, 6, 7 and 8	"	"	"	42 24	50
	Lots 2 and 3	5	1 S	12 W	6 87	50
	NE ¼	7	"	"	160 00	2 00
	Lots 3 and 4 of SW ¼	"	"	"	83 16	1 00
	Fracl NE ¼ of NE ¼ (or Lot 1)	11	"	"	30 90	50
	NW ¼ of NW ¼	"	"	"	40 00	50
	E ½ of NE ¼	13	"	"	80 00	1 00
	Lot 1 of NW ¼	19	"	"	42 87	50
	Carried forward—Acres,				25,893 52	$327 00

West of San Bernardino Principal Meridian.

REMARKS.

Selected by State of California, Feby 11th, 1870. Canceled by Com'r, Feby 8th, 1877.

State Selections, May 24th, '69, and Feby 11th, 1870. Canceled by Com'r, Feby 8th, 1877.

State Selection, Feby. 11th, 1870. Canceled by Com'r, Jany. 29th, 1876.

State Selection, " " " Canceled by Com'r, Jany. 29th, 1876.

Cash entry of Samuel J. Cramer. Abandoned.

Cash entry of Civility R. Greenwade. Canceled by Com'r and affirmed by Secty of Interior.

D. S. of B. F. Smith, expired by limitation. *See affidavit relating to abandonment.* State Selection, Feby 11th, 1870. Canceled by Com'r, Jany 29, 1876.

D. S. of W. Ruiz, expired by limitation. *See affidavit relating to abandonment.* Same. Same.

NOTE.—Matter printed in italic is red in original.

7 G. 130. (4-5-92-500.)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward—Acres,				25,893 52	$327 00
	E ½	29	1 S	12 W	320 00	4 00
	NW ¼	"	"	"	160 00	2 00
	NW ¼ of SW ¼	"	"	"	40 00	50
	Lots 3 and 4 of SE ¼	25	1 S	13 W		50
	SE ¼	23	1 S	14 W	160 00	2 00
	NW ¼	25	"	"	160 00	2 00
	SW ¼ of SE ¼	5	2 S	1 W	40 00	50
	NE ¼ of NE ¼	7	"	"	40 00	50
	E ½ of SE ¼	"	"	"	80 00	1 00
	N ½ of NW ¼	9	"	"	80 00	1 00
	SE¼	"	"	"	160 00	2 00
	NW¼ of SW ¼	"	"	"	40 00	50
	S ½ of SW ¼	"	"	"	80 00	1 00
	All of	15	"	"	640 00	8 00
	NW ¼	17	"	"	160 00	2 00
	S½	21	"	"	320 00	4 00
	E ½ of NW ¼	23	"	"	80 00	1 00
	S ½ of SW ¼	"	"	"	80 00	1 00
	SW ¼ of NW ¼	"	"	"	40 00	50
	SW ¼	27	"	"	160 00	2 00
	Carried forward—Acres,				28,752 09	$363 00

West of San Bernardino Principal Meridian.

REMARKS.

State Selection, Feby 11th, 1870. Canceled by Com'r, Jany. 29th, 1876.

State Selection, Feby 24th, 1870. Canceled by Com'r, Jany 29th, 1876.

D. S. of Joel A. Jennings—illegal. *See affidavit of "non-residence" herewith.*

NOTE.—Matter printed in italic is red in original.

8 G. 130. (4-5-92-500.)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward—Acres,				28,752 09	$365 00
	All of	29	2 S	1 W	640 00	8 00
	All of fracl	31	"	"	651 20	8 00
	All	33	"	"	640 00	8 00
	All	35	"	"	640 00	8 00
	All of fracl	1	2 S	3 W	658 00	8 00
	Fracl. N ½	3	"	"	356 04	4 50
	E ½ of SW ¼	"	"	"	80 00	1 90
	Fracl. NE ¼	5	"	"	178 00	2 00
	Lots 1, 2 and 5 to 16 (inclusive),	13	"	"	549 67	7 00
	All of fracl	31	"	"	638 40	8 00
	SW ¼	33	"	"	160 00	2 00
	All of	35	"	"	640 00	8 00
	Fracl. W ½	1	2 S	7 W	324 49	4 00
	Lots 1, 2, 3 and 4	3	"	"	171 08	2 00
	S ½ of NE ¼	"	"	"	80 00	1 00
	Lots 5 and 6	"	"	"	85 57	1 00
	SE ¼	"	"	"	160 00	2 00
	All of	11	"	"	640 00	8 00
	All of fracl	13	"	"	557 71	7 00
	W ½ of NE ¼; SW ¼ of SE ¼	15	"	"	120 00	1 50
	Lots 1, 2, 3 and 4	"	"	"	171 00	2 00
	Carried forward—Acres,				36,893 25	$464 00

West of San Bernardino Principal Meridian.

REMARKS.

9 G. 130. (4-5-92-500.)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Brought forward—Acres,				36,893	25	$464 00
	Lots 1 and 2	23	2 S	7 W	49	52	50
	Lots 3 and 4	"	"	"	48	00	50
	NW ¼ of NE ¼	"	"	"	40	00	50
	NE ¼ of NW ¼	"	"	"	40	00	50
	Lot 1	27	"	"	1	65	50
	All of fracl	31	2 S	8 W	616	80	8 00
	All of	33	"	"	640	00	8 00
	SW ¼	35	"	"	160	00	2 00
	Lots 1 to 5	1	2 S	9 W	100	12	1 50
	S ½ of SE ¼	"	"	"	80	00	1 00
	SW ¼	"	"	"	160	00	2 00
	NW ¼ of NW ¼	33	"	"	40	00	50
	S ½ of NW ¼	35	"	"	80	00	1 00
	S ½	"	"	"	320	00	4 00
	Lots 1 to 6 (inclusive)	19	2 S	10 W	198	38	2 50
	SW ¼ of SE ¼	"	"	"	40	00	50
	SE ¼ of SW ¼	"	"	"	40	00	50
	Lots 1, 2 and 3	29	"	"	61	72	1 00
	Lot 1	13	2 S	11 W	3	59	50
	N ½ of NE ¼; NE ¼ of NW ¼	35	"	"	120	00	1 50
	Carried forward—Acres,				39,733	03	501 00

West of San Bernardino Principal Meridian.

REMARKS.

10 G. 130. (4-5-92-500.)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Brought forward—Acres,				39,733	03	$501 00
Lot 1		5	3 S	7 W	40	22	50
Fracl. SW ¼		7	"	"	145	60	1 00
Lots 3 to 16 (inclusive)		19	"	"	582	46	7 50
Lots 1 and 2		29	"	"	26	10	50
Fracl. NW ¼		1	3 S	8 W	156	09	2 00
N ½ of SW ¼		"	"	"	80	00	1 00
SW ¼ of SW ¼		"	"	"	40	00	50
Fracl. N ½		3	"	"	321	98	4 00
NW ¼ of SW ¼		"	"	"	40	00	50 00
Fracl. E ½ of NE ¼		5	"	"	80	60	1 00
S ½		"	"	"	320	00	4 00
SW ¼ of NW ¼		"	"	"	40	00	50
W ½ of SE ¼		7	"	"	80	00	1 00
NE ¼ of SW ¼		"	"	"	40	00	50
Fracl. NW ¼ of SW ¼		"	"	"	36	50	50
NE ¼		9	"	"	160	00	2 00
E ½ of NW ¼		"	"	"	80	00	1 00
S ½ of SE ¼		"	"	"	80	00	1 00
S ½ of SW ¼		"	"	"	80	00	1 00
All of		11	"	"	640	00	8 00
All of		13	"	"	640	00	8 00
NE ¼		17	"	"	160	00	2 00
	Carried forward—Acres,				43,602	35	$550 00

West of San Bernardino Principal Meridian.

REMARKS.

D. S. No. 6 of William Hennessy—expired by limitation.

11 G. 130. (4-5-92-500.)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	Name of Range	Area. Acres .100.	Fees of Register and Receiver.
	Brought forward—Acres,				43,602 36	$550 00
	NE ¼	23	3 S	8 W	160 00	2 00
	All of fracl	1	3 S	9 W	637 98	8 00
	All of fracl	3	"	"	635 96	8 00
	Lots 1 and 2 of NE ¼	5	"	"	77 67	1 00
	S ½ of NE ¼	"	"	"	80 00	1 00
	Lots 3 and 4 of NW ¼	"	"	"	65 58	1 00
	N ½ of SE ¼	"	"	"	80 00	1 00
	Lots 5 and 6 of SW ¼	"	"	"	64 38	1 00
	S ½ of SE ¼	"	"	"	80 00	1 00
	NE ¼	9	"	"	160 00	2 00
	N ½ of NW ¼	"	"	"	80 00	1 00
	N ½	11	"	"	320 00	4 00
	NW ¼ of NE ¼	13	"	"	40 00	50
	S ½ of NE ¼	"	"	"	80 00	1 00
	W ½	"	"	"	320 00	4 00
	SE ¼	"	"	"	160 00	2 00
	NE ¼	23	"	"	160 00	2 00
	Lots 1 and 2 of SE ¼	"	"	"	12 88	50
	Fracl. S ½	5	4 S	6 W	326 40	4 00
	Fracl. SW ¼	9	"	"	170 33	2 00
	All of fracl	17	"	"	630 95	8 00
	Carried forward—Acres,				47,944 49	$605 00

West of San Bernardino Principal Meridian.

REMARKS.

D. S. No. 20 of Locario Arrissa--expired by limitation.

D. S. No. 19 of Ramon Arissa—expired by limitation

12 G. 130. (4-5-92—500.)

Railroad List. **South of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward—Acres,				47,944 49	$605 00
	All of fracl.	21	4 S	6 W	683 35	8 50
	All of fracl.	27	"	"	680 85	8 50
	E ½	33	"	"	320 00	4 00
	All	35	"	"	640 00	8 00
	Lots 1, 2 and 3	5	4 S	9 W	121 06	1 50
	E ½	1	5 S	2 W	320 00	4 00
	All of	7	"	"	640 00	8 00
	SE ¼	11	"	"	160 00	2 00
	S ½ of SW ¼	"	"	"	80 00	1 00
	All	15	"	"	640 00	8 00
	SW ¼	19	"	"	160 00	2 00
	S ½ of SE ¼	21	"	"	80 00	1 00
	SW ¼	"	"	"	160 00	2 00
	All of	23	"	"	640 00	8 00
	All of	25	"	"	640 00	8 00
	All of	29	"	"	640 00	8 00
	Fracl. N ½	31	"	"	309 68	4 00
	Fracl. W ½ of SW ¼	"	"	"	69 68	1 00
	N ½	33	"	"	320 00	4 00
	Lots 1 and 2	1	5 S	8 W	38 57	50
	Carried forward—Acres,				55,287 68	$697 00

West of San Bernardino Principal Meridian.

REMARKS.

13 G. 130. (4-5-92—500.)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver
	Brought forward—Acres,				55,287 68	$697 00
	Fracl. N ½	1	3 S	1 E	319 30	4 00
	NW ¼ of SW ¼	5	"	"	40 00	50
	SW ¼ of NW ¼	"	"	"	40 00	50
	All of	9	"	"	640 00	8 00
	N ½	15	"	"	320 00	4 00
	NW ¼	23	3 S	2 E	160 00	2 00
	SE ¼	5	5 S	1 E	160 00	2 00
	E ½	7	"	"	320 00	4 00
	W ½ and SE ¼	9	"	"	480 00	6 00
	NE ¼	15	"	"	160 00	2 00
	NE ¼ of NW ¼	"	"	"	40 00	50
	Fracl. W ½	1	5 S	2 E	321 20	4 00
	All of	11	"	"	640 00	8 00
	S ½	13	"	"	320 00	4 00
	NE ¼	"	"	"	160 00	2 00
	Total acres,				59,408 18	$748 50
	Add on s/c of error on page 10,				22	
					59,408 40	

West of San Bernardino Principal Meridian.

REMARKS.

G. 399. 5-2-89-500.

State of California,
ss.
City and County of San Francisco.

I, Jerome Madden, being duly sworn, depose and say: That I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from San Fernando to Indian Wells for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of one hundred and fifty (150) miles, being for the first, second and third sections of said road, starting from a point in the northwest one-quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at the termination of the one hundredth and fiftieth mile therefrom, at a point in southwest one-quarter of section 24, township 5 south, range 7 east, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this twenty-seventh (27th) day of June, 1877.

THOS. H. REYNOLDS,

County Clerk of the City and County of San Francisco, California, and ex-officio Clerk of the 12th District Court thereof, the same being a court of record.

[Seal]

United States Land Office.

Los Angeles, California, July 2, 1877.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the act of Congress, approved July 1, 1864, and contemplated by

the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of seven hundred and forty-eight and fifty hundredths ($748.50) dollars in full payment and discharge of said fees.

ALFRED JAMES,
Register.

J. W. HAVERSTICK,
Receiver.

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 195. Stephen Potter, Special Examiner" and find it to be a full, true and correct copy of said original.

San Francisco, August 13th, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 197.

List No. 4.

Lands selected by the

Southern Pacific Railroad Company

in the Los Angeles land district

State of California.

granted limits.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company,
San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the eleventh day of July, A. D. 1882.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the Twenty-third section of the act of Congress, appproved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes" and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled, "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the first

(1st), second (2d) and fourth (4th) sections (one hundred and seventy-eight and fifty-nine hundredths (178.59) miles) of the same, commencing at a point in the northeast quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in southwest quarter of section 4, township 3 south, range 1 west, San Bernardino base and meridian, which said sections of road and telegraph have been duly accepted by the President of the United States as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly as follows.

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad Company.

G. 180. (4-5-92—500.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	NE ¼ of NE ¼; S ½ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼ and S ½	23	1 N	6 W	560 00	7 00
	All	25	"	"	640 00	8 00
	All	27	"	"	640 00	8 00
	All	29	"	"	640 00	8 00
	All fracl	31	"	"	642 92	8 00
	All	35	"	"	640 00	8 00
	Lots 1, 2, 3 and 4	21	1 N	7 W	136 56	2 00
	E ½ of NE ¼; E ½ of SE ¼; Lots 1, 2, 3 and 4	27	"	"	173 48	2 00
	E ½ of NE ¼; NW ¼ of NE ¼; SE ¼ of SE ¼ and Lots 1, 2, 3 and 4	35	"	"	165 88	2 00
	W ½ of SW ¼	13	1 N	8 W	80 00	1 00
	Lots 1, 2, 3 and 4	27	1 N	14 W	78 49	1 00
	S ½ of SE ¼; S ½ of SW ¼; Lots 1, 2, 3 and 4	31	"	"	316 40	4 00
	S ½ of SE ¼; S ½ of SW ¼; Lots 1, 2, 3 and 4	33	"	"	249 20	3 50
	E ½	35	"	"	320 00	4 00
					5,282 93	$66 50

West of San Bernardino Principal Meridian.

REMARKS.

G. 130. (4-5-92-500)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				5,282 93	$66 50
	Lots 1 and 2; E ½ of SW ¼ and SE ¼	31	2 N	12 W	321 00	4 00
	All fracl.	21	3 N	15 W	598 76	7 50
	NW ¼	13	3 N	19 W	160 00	2 00
	All	15	4 N	19 W	640 00	8 00
	E ½ of NE ¼; E ½ of SE ¼	17	"	"	160 00	2 00
	All	21	"	"	640 00	8 00
	E ½ of NE ¼; NE ¼ of SE ¼	29	"	"	120 00	1 50
	SE ¼ of NE ¼	33	"	"	40 00	50
	Lots 2 and 3	33	"	"	80 37	1 00
	Lot 4	33	"	"	32 44	50
	Forward,				8,075 50	$101 50

West of San Bernardino Principal Meridian.

REMARKS.

Thomas J. Casner D. S. 716, expired by limitation. Casner afterwards filed for another tract in 3 N, 21 W, S. B. M., which filing has been approved by Com'r.

Francis M. Casner D. S. 717. Settled Apl. 12, 1872. Consequently void. His filing has also expired by limitation.

G. 130. (4-5-92-500)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver
	Brought forward,				8,075	50	$101 50
	S ½ of NE ¼; Lot 10	3	1 S	14 W	120	66	1 50
	Lots 6, 7 and 8; SW ¼ of NW ¼	3	"	"	160	71	2 00
	Lots 3, 4 and 5	3	"	"	59	02	50
	All fracl	5	"	"	640	54	8 00
	Fracl. N ½	7	"	"	320	44	4 00
	Lots 1, 2 and 3; S ½ of NE ¼; SE ¼ of NW ¼ and S ½	1	1 S	15 W	560	00	7 00
	NE ¼; S½ of NW ¼ and S ½	11	"	"	560	00	7 00
	Fracl. N ½ and NE ¼ of SE ¼	3	2 S	4 W	378	84	4 50
	All fracl	5	"	"	639	31	8 00
	All fracl	7	"	"	508	21	6 50
	NW ¼; W ½ of SW ¼	9	"	"	240	00	3 00
	N ½ of NW ¼; SW ¼ of NW ¼; N ½ of NE ¼	17	"	"	200	00	2 50
	All fracl	19	"	"	636	28	8 00
	S ½ of NE ¼; N ½ of SW ¼; SE ¼ of NW ¼	21	"	"	200	00	2 50
	NW ¼; SE ¼; SW ¼ of NE ¼	33	"	"	360	00	4 50
	NE ¼	35	"	"	160	00	2 00
	Forward,				13,819	51	$173 00

West of San Bernardino Principal Meridian.

REMARKS.

4 G. 130. (4-5-92-500)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				13,819 51	$173 00
All		21	2 S	9 W	640 00	8 00
NW ¼		27	"	"	160 00	2 00
All		29	"	"	640 00	8 00
S ½		11	3 S	9 W	320 00	4 00
	Total,				15,579 51	$195 00

West of San Bernardino Principal Meridian.

REMARKS.
State Selection. Held for cancellation as invalid by Com'r, Sept. 27/80. Finally cancel'd by Com'r Feb'y 5/81.
State Selection. Held for cancellation as invalid by Com'r Nov. 16/80. Finally cancel'd by Com'r Mch. 29/81.
State Selection. Held for cancellation as invalid by Com'r Nov. 16/80. Finally cancel'd by Com'r Mch. 29/81.
State Selection. Held for cancellation as invalid by Com'r Nov. 16/80. Finally cancel'd by Com'r Mch. 29/81.

State of California,
City and County of San Francisco. } ss

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the same Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to San Gorgonio Summit, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limit of twenty (20) miles on each side of the line of route for a continuous distance of one hundred and seventy-eight and fifty-nine hundredths (178.59) miles, being for the first, second and fourth sections of said road, starting from a point in the northeast quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in southwest quarter of section 4, township 3 south, range 1 west, San Bernardino base and meridian.

JEROME MADDEN.

[Seal]

CLERK'S COPY 468

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900.

No. 18

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, TRUSTEES, AND THE CENTRAL TRUST COMPANY, OF NEW YORK,

Appellants,

VS.

THE UNITED STATES OF AMERICA,

Appellee.

VOLUME VI

(PAGES 2205 to 2688 Inclusive)

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 494

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND HOMER S. KING, Trustees, AND THE CENTRAL TRUST COMPANY, OF NEW YORK,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

VOLUME 6

(PAGES 2205—2628 Inclusive.)

Appeal from the Circuit Court of the United States for the Southern District of California.

Sworn to and subscribed before me, this twelfth (12th) day of July, 1882.

DAVID WILDER,

County clerk of the city and county of San Francisco, California, and ex-officio clerk of the Superior Court thereof, the same being a court of record.

[Seal]

United States Land Office,

Los Angeles, Cal. July 14th, 1882.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side, and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or any valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the

circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of one hundred and ninety-five ($195.00) in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 197. Stephen Potter, Special Examiner," and find it to be a full, true and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 199.

List No. 5.

Lands selected by the

Southern Pacific Railroad Company

In the Los Angeles Land District

State of California

Granted Limits.

(G. 158. 6-6-93-250.)

Office of the Southern Pacific Railroad Company,

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the twelfth day of July, A. D. 1882.

JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands.

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act approved July 25, 1868, entitled, "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and

telegraph of said company; being in part for the first (1st) section (fifty (50) miles) of the same, commencing at a point in the northwest quarter of section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at a point in the northeast quarter of section 27, township 1 south, range 9 west, San Bernardino base and meridian, which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad Company.

G. 130. (4-5-92-500)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver
	W ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼.....	15	1 N	11 W	160 00	2 00

West of San Bernardino Principal Meridian.

REMARKS.

Fabricco de' la Ossa, D. S. 581. C. E. 209. Feby. 16, 1874. Canceled by Com'r Sept. 4th, 1880.
L. H. Emerson, application to file D. S. Rejected by Com'r on May 19th, 1882.

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of the portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from San Fernando to Spadra, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of fifty (50) miles, being for the first (1st) section of said road, starting from a point in the northwest quarter of section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at a point in the northwest quarter of section 27, township 1 south, range 9 west San Bernardino base and meridian.

JEROME MADDEN.

[Seal]

Sworn to and subscribed before me, this twelfth (12) day of July, 1882.

DAVID WILDER

County clerk of the city and county of San Francisco, California, and ex-officio clerk of the Superior Court thereof, the same being a Court of record.

[Seal]

United States Land Office.

Los Angeles, Cal., March 9, 1883.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the re-

ceiver, the full sum of two dollars ($2) in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

I certiy that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 199, Stephen Potter, Special Examiner," and find it to be a full, true, and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 201.

United States Land Office.
Los Angeles, California.

——— 189—

List No. 8.

Lands selected by the

Southern Pacific Railroad Company.

Granted Limits.

(G. 158. 6-6-93-250.)

Office of the Southern Pacific Railroad Company.
San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Mad-

den was appointed land agent of the said Southern Pacific Railroad Company, by the board of directors of said company, at a meeting held on the tenth (10) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the 25th day of April, A. D., 1883.

J. L. WILLCUTT,

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California.

Selected by the

Southern Pacific Railroad Company of California.

The undersigned the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes" and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled, "An

act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the fourth (4th) section (seventy-eight and fifty-nine hundredths (78.59) miles) of the same, commencing at a point in northwest quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at a point in northeast quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian, which section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad Company.

G. 130. (4-5-92-500)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	NW ¼ of NW ¼.....	25	4 N	19 W	40 00	50

West of San Bernardino Principal Meridian.

REMARKS.
Asi Hopper. D. S. 769.

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from San Fernando to Mojave for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of seventy-eight and fifty-nine hundredths (78.59) miles, being for the fourth (4th) section of said road, starting from a point in northwest quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at a point in northeast quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian.

JEROME MADDEN.

[Seal]

Sworn to and subscribed before me, this first day of May, 1883.

WILLIAM T. SESNON,
County court of the city and county of San Francisco, California, and ex-officio clerk of the Superior Court thereof, the same being a Court of record.

[Seal]

United States Land Office.

Los Angeles, Cal., ——— 18—

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the re-

ceiver, the full sum of fifty cents ($0.50) in full payment and discharge of said fees.

_____

Register.

_____

Receiver.

Over.

United States Land Office.

Los Angeles, Calif., May 25, 1883.

Offered and fees tendered and rejected on the ground that the tract applied for was conveyed to Ori Hopper by the United States, by patent dated January 15, 1883.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

United States Surveyor-General's Office.

San Francisco, Calif., May 3, 1883.

I, W. H. Brown, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed wih me, at San Francisco, a duplicate certificate of deposit No. 218, dated May 2d, 1883, to the credit of the United States, showing that the sum of $1.35 has been deposited as cost of survey and $0.45 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and de-

scribed in the list of lands hereto annexed, to the extent of said list.

Survey.....	$1.35
Office Work....	.45
	$1.80

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN.
Surveyor-General.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 201, Stephen Potter, Special Examiner," and find it to be a full, true and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 203.

United States Land Office,
Los Angeles, Cal., May 25, 1883.

List No. 11.

Lands Selected

by the

Southern Pacific Railroad Company.

Granted Limits.

G. 158 (6-6-93-250.)

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the 10th day of May, A. D. 1883.

JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California.

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of itsroad,and for other purposes,"

and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25,1868, entitled, "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company, as inuring it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the 1st, 2d, 3d, and 4th sections (two hundred and twenty-eight and fifty-nine one hundredths (228.59) miles) of the same, commencing at a point in northeast one-quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in southwest one-quarter of section 24, township 5 south, range 7 east, San Bernardino base and meridian, which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

G. 130. (4-5-92-500)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	All fracl.....	7	1 N	1 E	642 10	8 00
	S ½.....	9	"	"	320 00	4 00
	All.....	13	"	"	640 00	8 00
	All.....	15	"	"	640 00	8 00
	All.....	17	"	"	640 00	8 00
	All.....	21	"	"	640 00	8 00
	All.....	23	"	"	640 00	8 00
	N ½.....	25	"	"	320 00	4 00
	N ½.....	27	"	"	320 00	4 00
	Forward,				4,802 10	$60 00

East of San Bernardino Principal Meridian.

REMARKS.

G. 130. (4-5-92-500.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.
	Brought forward,				4,802 10	$60 00
	Lots 1, 2, 3 and 4; N ½ of SE ¼; SE ¼ of SE ¼	19	1 N	3 W	216 01	3 00
	SW ¼	27	"	"	160 00	2 00
	S ½ of NE ¼; NW ¼; S ½	29	"	"	560 00	7 00
	All	33	"	"	640 00	8 00
	NW ¼; S ½	35	"	"	480 00	6 00
	Lots 1 and 2; NE ¼ of SW ¼	13	1 N	4 W	113 54	1 00
	All fracl.	27	1 N	5 W	530 30	6 50
	W ½	35	"	"	320 00	4 00
	W ½ of SW ¼	9	1 N	6 W	80 00	1 00
	W ½	11	"	"	320 00	4 00
	S ½	13	"	"	320 00	4 00
	All	15	"	"	640 00	8 00
	E ½ of NE ¼	17	"	"	80 00	1 00
	S ½ of SW ¼	15	1 N	9 W	80 00	1 00
	S ½ of SE ¼	19	"	"	80 00	1 00
	NW ¼ of NE ¼; S ½	21	"	"	360 00	4 50
	N ½ of SW ¼	27	"	"	80 00	1 00
	Forward,				9,861 95	$123 00

West of San Bernardino Principal Meridian.

REMARKS.

G. 130. (4-5-92-500.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				9,861 95	$123 00
	SW ¼ of SW ¼.....	15	1 N	10 W	40 00	50
	E ½ of NE ¼; N ½ of SE ¼; Lots 5 and 6.....	19	"	"	189 43	2 50
	NE ¼ of SW ¼; NE ¼ of NE ¼; Lots 3 and 4.....	21	"	"	155 44	2 00
	S ½ of SW ¼	23	"	"	80 00	1 00
	Lot 2.....	27	"	"	9 09	50
	Lot 2; E ½ of SW ¼; SE ¼....	7	1 N	11 W	283 75	3 50
	W ½ of NW ¼.....	13	"	"	80 00	1 00
	Lots 1, 2, 3 and 4; N ½; N ½ of SE ¼; N ½ of SW ¼.....	23	3 N	15 W	527 48	6 50
	Lot 1, and SE ¼ of NE ¼.....	5	3 N	19 W	79 95	1 00
	NE ¼; Lot 3; SE ¼ of NW ¼..	19	4 N	18 W	239 77	3 00
	NE ¼ of NE ¼; S ½ of NE ¼; Lot 1; Fracl. S ½.....	31	"	"	480 11	6 00
	W ½.....	23	4 N	19 W	320 00	4 00
	N ½	27	"	"	320 00	4 00
	NE ¼ of SW ¼, and NW ¼ of SE ¼.....	33	"	"	80 00	1 00
	Forward,				12,746 97	$159 50

West of San Bernardino Principal Meridian.

REMARKS.

G. 130. (4-5-92-500.)

Railroad List. **South of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				12,746 97	$159 50
	Fracl. S ½	19	1 S	1 W	319 24	4 00
	W ½ of NW ¼; SE ¼	9	1 S	2 W	240 00	3 00
	E ½; S ½ of NW ¼; S ½ of SW ¼	13	"	"	480 00	6 00
	SW ¼	15	"	"	160 00	2 00
	SE ¼	21	"	"	160 00	2 00
	NE ¼ of NW ¼; S ½ of NW ¼; NE ¼	25	"	"	280 00	3 50
	N ½	35	"	"	320 00	4 00
	NW ¼ of SE ¼; S ½ of NW ¼; NW ¼ of NW ¼; NE ¼ of SW ¼	19	2 S	2 W	200 00	2 50
	N ½ of NE ¼	29	"	"	80 00	1 00
	NE ¼ of SW ¼	11	2 S	3 W	40 00	50
	E ½ of NE ¼; N ½ of SE ¼	15	2 S	7 W	160 00	2 00
	SE ¼ of SE ¼	15	"	"	40 00	50
	W ½ of NW ¼	23	"	"	80 00	1 00
	N ½ of NW ¼	35	2 S	9 W	80 00	1 00
	Lot 4	31	2 S	13 W	42 16	50
	Forward,				15,428 37	$193 00

West of San Bernardino Principal Meridian.

REMARKS.

Chas. H. Gibbons, D. S. No. 42, Oct. 30, '69 – Jan. 24, '70. Expired by limitation.

Chas. H. Tyler, D. S. No. 3, Sept. 6, '69—Sept. 29, '69. Expired by limitation.

State Indemnity Selection No. 2102, June 3, 1869. Cancelled, Com'rs letter "G," Mch. 29, '81.

G. 130. (4-5-92-500)

Railroad List, South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				15,428 37	$193 00
	All fracl.	1	3 S	1 W	634 84	8 00
	All fracl.	3	"	"	606 72	7 50
	Fracl. N ½; SE ¼	5	"	"	424 00	5 50
	NW ¼; W ½ of NE ¼; lot 1	9	"	"	285 10	3 50
	E ½ of NW ¼. W ½ of NE ¼	31	"	"	160 00	2 00
	NW ¼	33	"	"	160 00	2 00
	S ½ of SE ¼; S ½ of SW ¼	15	3 S	5 W	160 00	2 00
	SE ¼ of NW ¼	9	3 S	9 W	40 00	50
	E ½ of NW ¼; E ½ of SW ¼	1	5 S	2 W	160 00	2 00
	NE ¼; E ½ of NW ¼; NE ¼ of SW ¼	11	"	"	280 00	3 50
	Lots 1, 2, 3, 4 and SW ¼	17	"	"	304 96	4 00
	N ½	35	"	"	320 00	4 00
	All fracl.	3	6 S	1 W	512 92	6 50
	Fracl. N ½ lot 7; W ½ of SW ¼; NE ¼ of SW ¼	5	"	"	417 92	5 00
	SW ¼ of NW ¼; N ½ of SW ¼; SW ¼ of SW ¼	13	"	"	160 00	2 00
	W ½ of SW ¼	17	"	"	80 00	1 00
	Forward,				20,134 87	$252 00

West of San Bernardino Principal Meridian.

REMARKS.
Indemnity School Selection, May 17, 1869. Canceled, Comr's letter "G," Mch. 29, 1881.
Indemnity School Selection, Feby. 11, 1870. Canceled, Comr's letter "G," Jany. 31, 1881.

G. 130. (4-5-92-500)

Railroad List. **South of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.
	Brought forward,				20,134 87	$252 00
	E ½ of NE ¼	19	6 S	1 W	80 00	1 00
	SW ¼ of NE ¼	21	"	"	40 00	50
	Lots 9 and 10					
	Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14	1	6 S	2 W	578 58	7 50
	S ½ of NE ¼; S ½ of NW ¼; S ½	3	"	"	480 00	6 00
	SW ¼ of SE ¼; E ½ of SW ¼ and SW ¼ of SW ¼	5	"	"	160 00	2 00
	Fracl. N ½; SE ¼	7	"	"	476 80	6 00
	All	9	"	"	640 00	8 00
	Fracl. N ½	11	"	"	319 07	4 00
	All fracl	1	6 S	3 W	641 98	8 00
	Fracl. NE ¼; N ½ of SE ¼; Fracl. N ½ of NW ¼	3	"	"	325 00	4 00
	Forward,				23,876 30	$299 00

West of San Bernardino Principal Meridian.

	REMARKS.
E ½ of NE ¼.	Indemnity School Selection, April 14th, 1870. Canceled, Com'r "G," Jany. 31, '81.

G. 130. (4-5-92-500)

Railroad List. **South of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				23,876 30	$299 00
All	fracl.	7	3 S	1 E	647 22	8 00
All		17	"	"	640 00	8 00
[NE ¼		19	"	"	160 00	2 00
	Total,				25,323 52	$317 00

East of San Bernardino Principal Meridian.

REMARKS.

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: That I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to Indian Wells, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of two hundred and twenty-eight and fifty-nine one-hundredths (228.59) miles being for the first (1st), second, (2d) third (3d) and fourth (4th) sections of said road, starting from a point in northeast one-quarter, section 17, township 11 north, range 12 west, S. B. B. & M., and ending at a point in southwest one-quarter, section 24, township 5 south, range 7 east, S. B. B. & M.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this fourteenth day of May, 1883.

WILLIAM T. SESNON,

County clerk of the city and county of San Francisco, California, and ex-officio clerk of the Superior Court thereof, the same being a Court of Record.

[Seal]

United States Land Office.

Los Angeles, Cal., May 25, 1883.

We hereby certify that we have carefuly and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office; and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions, dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of three hundred

and seventeen dollars ($317.00) in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

United States Surveyor-general's Office.

San Francisco, California, May 15, 1883.

I, W. H. Brown, surveyor-general for the United States in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 268, dated May 15, 1883, to the credit of the United States, showing that the sum of $854.67 has been deposited as cost of survey, and $284.89 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	$854.67
Office work	$284.89
	$1139.56

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor-General.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "United States vs. Southern Pacific, 600, Defendants' Exhibit No. 203. Stephen Potter, special examiner," and find it to be a full, true, and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special examiner.

Defendant's Exhibit No. 205.

United States Land Office.

Los Angeles, California, April 16, 1884.

List No. 13.

Lands Selected

by the

Southern Pacific Railroad Company.

Granted Limits.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcut, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been

continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the third day of April, A. D. 1884.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.
[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled, "an act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "an act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "concerning the Southern

Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company, as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the second (2nd) section (fifty (50) miles) of the same; commencing at a point in northeast one-quarter, section 27, township 1 south, range 9 west, S. B. B. & M., and ending at a point in southwest one-quarter, section 4, township 3 south, range 1 west, S. B. B. & M., which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolutions of Congress. The selections being particularly described as follows.

JEROME MADDEN.

Land agent of the Southern Pacific Railroad Company.

2 G. L. 79 B.
(Old G. 130.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	SW ¼ of NE ¼	11	1 N	4 W	40 00	
	W ½ of SE ¼	"	"	"	80 00	
	W ½	"	"	"	320 00	
					440 00	$6 00

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Spadra to San Gorgonio Summit, for which a grant of lands was made by the acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of fifty (50) miles, being for the second (2nd) section of said road, starting from a point in northeast one-quarter, section 27, township 1 south, range 9 west, S. B. B. & M., and ending at a point in southwest one-quarter, section 4, township 3 south, range 1 west, S. B. B. & M.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me, this seventh day of April, 1884.

J. D. RUGGLES,
Deputy county Clerk of the city and county of San Francisco, California, and ex-officio deputy clerk of the Superior Court thereof, the same being a Court of record.

[Seal]

United States Land Office.

Los Angeles, Cal., April 16, 1884.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions, dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said Company have paid to the undersign-

ed, the receiver, the full sum of six ($6) dollars in full payment and discharge of said fees.

CHAS R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

United States Surveyor-General's Office.

San Francisco, California, April 7, 1884.

I, W. H. Brown, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 174, dated April 7, 1884, to the credit of the United States, showing that the sum of $14.85 has been deposited as cost of survey, and $4.95 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey, ... $14.85
Office work, ... $4.95

$19.80

In testimony whereof, I have hereunto set my hand and official seal

W. H. BROWN,
Surveyor-General.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "United States vs. Southern Pacific, 600. Defendants' Exhibit No. 205, Stephen Potter, special examiner," and find it to be a full, true, and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special examiner.

Defendant's Exhibit No. 207.

United States Land Office.

Los Angeles, California, July 19, 1884.

List No. 17.

Lands Selected.

by the

Southern Pacific Railroad Company.

Granted Limits.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said Company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been

continuously, and is now, the land agent, of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the eleventh day of June, A. D. 1884.

JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of lands

in the Los Angeles Land District, California.

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, approved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled, "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "concerning the Southern Pacific Railroad of California," and under and in pursu-

ance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the first (1st), second (2nd), third (3rd), and fourth (4th) sections (two hundred twenty-eight and fifty-nine one-hundredths (228 59-100) miles) of the same, commencing at a point in northeast one-quarter, section 17, township 11 north, range 12 west, S. B. B. & M., and ending at a point in southwest one-quarter, section 24, township 5 south, range 7 east, S. B. B. & M., which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

2 G. L. 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Fracl. W ½	3	1 N	2 W	321 68	
	Fracl. N ½	5	"	"	323 32	
	N ½ of NE ¼	25	1 N	10 W	80 00	
	All fracl.	19	2 N	2 W	640 64	
	NE ¼; Fracl. W ½; N ½ of SE ¼; SW ¼ of SE ¼	31	"	"	599 32	
	All	33	"	"	640 00	
	W ½ of SW ¼	11	2 N	3 W	80 00	
	N ½ of NE ¼	15	"	"	80 00	
	S ½ of NE ¼	15	"	"	80 00	
	N ½ of SE ¼	15	"	"	80 00	
	NW ¼ of SW ¼	15	"	"	40 00	
	All	21	"	"	640 00	
	SE ¼	13	2 N	4 W	160 00	
	SW ¼, and S ½ of SE ¼	29	6 N	12 W	240 00	
	All	31	"	"	640 00	
	Forward,				4,644 96	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

~~2 G. L.~~ 79 B.
(Old G. 130.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	Name of Range	Area. Acres .100.	Fees of Register and Receiver.
	Forward,				4,644 96	
All		1	6 N	13 W	640 00	
All		3	"	"	640 00	
All fracl		7	"	"	640 80	
All		11	"	"	640 00	
S ½		15	"	"	320 00	
NW ¼; W ½ of SW ¼, and E ½ of SE ¼		17	"	"	320 00	
All		21	"	"	[illegible]	
All		23	"	"	[illegible]	
All		25	"	"	640 00	
All		1	6 N	14 W	640 00	
NE ¼		11	"	"	160 00	
N ½		13	"	"	320 00	
All		15	7 N	12 W	640 00	
All		21	"	"	640 00	
All		27	"	"	640 00	
All fracl		31	"	"	642 40	
	Forward,				13,448 16	

(4-15-90-500)

West of San Bernardino Principal Meridian.

REMARKS

2 G. L. 79 B.
(Old G. 180.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	Area. .100	Fees of Register and Receiver.
	Forward,				13,448	16	
	All fracl.	7	7 N	13 W	636	00	
	All	15	"	"	640	00	
	All	17	"	"	640	00	
	All fracl.	19	"	"	636	06	
	All	21	"	"	640	00	
	All	23	"	"	640	00	
	All	27	"	"	640	00	
	All	29	"	"	640	00	
	All fracl.	31	"	"	639	00	
	All	33	"	"	640	00	
	All	35	"	"	640	00	
	All fracl.	1	7 N	14 W	636	86	
	All fracl.	3	"	"	631	20	
	All fracl.	5	"	"	628	74	
	E ½; Frl. NW ¼; Lot 1 in SW ¼ and N ½ of Lot 2 in SW ¼.	7	"	"	600	00	
	All	9	"	"	640	00	
	All	11	"	"	640	00	
	All	13	"	"	640	00	
	All	15	"	"	640	00	
	All	21	"	"	640	00	
	Forward,				26,176	02	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

2 G. L. 79 B.
(Old G. 130.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Forward,				26,176 02	
	All	23	7 N	14 W	640 00	
	All	25	"	"	640 00	
	All	27	"	"	640 00	
	S ½ of SW ¼; NE ¼ of SW ¼; and SW ¼ of SW ¼	33	"	"	160 00	
	All	1	7 N	15 W	640 00	
	N ½	3	"	"	320 00	
	E ½ of NW ¼; N ½ of NE ¼	5	"	"	160 00	
	N ½	13	"	"	320 00	
	Forward,				29,696 02	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

2 G. L. 79 R.
(Old G. 130.)

Railroad List. **South of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Forward,				29,696 02	
	Lots 1, 2, 3, 4, 5, 6 and 7.....	33	1 S	9 W	194 31	
	Lots 1, 2, 3, 4 and S ½ of SW ¼..	35	"	"	176 00	
	SE ¼ of NW ¼	17	2 S	4 W	40 00	
	S ½ of SW ¼	21	"	"	80 00	
	NE ¼	7	2 S	6 W	160 00	
	E ½	1	2 S	7 W	321 49	
	S ½ of SE ¼	15	2 S	11 W	80 00	
	SW ¼	5	3 S	1 W	160 00	
	NE ¼	7	"	"	160 00	
	E ½ of NE ¼; SE ¼; and Lots 2, 3, 4.....	9	"	"	368 50	
	All	11	"	"	640 00	
	N ½.....	13	"	"	320 00	
	W ½ of NE ¼; NW ¼; and Fracl. SW ¼.....	15	"	"	420 60	
	Total,				32,816 92	$410 50

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

City and County of San Francisco. } ss.
State of California, }

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to Indio, for which a grant of lands was made by the Acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of two hundred, twenty-eight and fifty-nine one-hundredths (228.59-100) miles, being for the first (1st), second (2d), third (3d), and fourth (4th) sections of said road, starting from a point in northeast one-quarter, section 17, township 11 north, range 12 west, S. B. B. & M., and ending at a point in southwest one-quarter, section 24, township 5 south, range 7 east, S. B. B. & M.

JEROME MADDEN. (Seal.)

Sworn to and subscribed before me this 27th day of June, 1884.

WILLIAM T. SESNON,

County Clerk of the city and county of San Francisco, California, and ex officio clerk of the superior court thereof, the same being a court of record.

[Seal.]

United States Land Office.

Los Angeles, Cal., July 19, 1884.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above-mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of four hundred and ten and

fifty one-hundredths dollars ($410.50-100) in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

United States Surveyor-General's Office.

San Francisco, California, July 9, 1884.

I, W. H. Brown, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 9, dated July 9, 1884, to the credit of the United States, showing that the sum of $1107.57 has been deposited as cost of survey, and $369.19 for office work, and that the same sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey.....$1107.57
Office work.....$ 369.19

$1476.76

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor-general.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 207, Stephen Potter, special examiner," and find it to be a full, true, and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 209.

United States Land Office.

Los Angeles, California, December 6, 1884.

List No. 18.

Lands Selected by

The Southern Pacific Railroad Company.

Granted Limits.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Raliroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the sixteenth day of September, A. D. 1884.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the 23d section of the Act of Congress, appproved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," and the further act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pur-

suance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the second (2d) section (Fifty (50) miles) of the same, commencing at a point in northeast one-quarter, section 27, township 1 south, range 9 west, S. B. B. & M., and ending at a point in southwest one-quarter, section 4, township 3 south, range 1 west, S. B. B. & M., which said section of road and telegraph has been duly accepted by the president of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

2 G. L. 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	NW ¼.....	27	1 N	8 W	160 00	$2 00

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said Company from Spadra to San Gorgonio Summit for which a grant of lands was made by the Acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of fifty (50) miles, being for the second (2d) section of said road, starting from a point in northeast one-quarter, section 27, township 1 south, range 9 west, S. B. B. & M., and ending at a point in southwest one-quarter, section 4, township 3 south, range 1 west, S. B. B. & M.

JEROME MADDEN.

[Seal]

Sworn to and subscribed before me, this 26th day of September, 1884.

WILLIAM T. SESNON,
County clerk of the city and county of San Francisco, California, and ex officio clerk of the Superior Court thereof, the same being a court of record.

[Seal]

United States Land Office.

Los Angeles, Cal., December 6, 1884.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above-mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned,

the receiver, the full sum of two ($2) dollars in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

United States Surveyor-general's office.

San Francisco, California, September 27, 1884.

I, W. H. Brown, surveyor-general for the United States in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 70, dated September 27, 1884, to the credit of the United States, showing that the sum of $5.40 has been deposited as cost of survey, and $1.80 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey.....$5.40
Office work....$1.80

$7.20

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor-general.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 209. Stephen Potter, special examiner," and find it to be a full, true, and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special examiner.

Defendant's Exhibit No. 211.

United States Land Office.

Los Angeles, California, January 16, 1885.

List No. 21.

Lands selected by

The Southern Pacific Railroad Company.

Granted Limits.

Branch Line.

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the eighteenth day of November, A. D. 1884.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.
[Seal]

List of Lands.

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the 23d section of the Act of Congress, appproved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," and the further act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of Cal-

ifornia," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the first (1st), second (2d), third (3d), and fourth (4th) sections (two hundred and twenty-eight and fifty-nine one-hundredths (228.59-100) miles) of the same, commencing at a point in northeast one-quarter, section 17, township 11 north, range 12 west, S. B. B. & M., and ending at a point in southwest one-quarter, section 24, township 5 south, range 7 east, S. B. B. & M., which said sections of road and telegraph have been duly accepted by the president of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

2 G. L. 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	All	13	1 N	1 W	640 00	
	S ½ of SW ¼	17	1 N	7 W	80 00	
	Lots 1, 2, 3, 4	19	"	"	141 58	
	All	23	"	"	640 00	
	SW ¼ (fracl.)	19	1 N	8 W	160 60	
	Fracl. SW ¼	19	1 N	9 W	164 00	
	Lot 2	21	1 N	10 W	11 28	
	NE ¼	19	2 N	4 W	160 00	
	NW ¼ of NE ¼; E ½ of NW ¼; Lot 2	31	4 N	18 W	160 05	
	All fracl.	3	5 N	10 W	669 08	
	All fracl.	5	"	"	661 66	
	All fracl.	7	"	"	611 40	
	All	9	"	"	640 00	
	N ½ of SE ¼	17	"	"	480 00	
	All fracl.	1	5 N	11 W	650 92	
	SE ¼ and fracl N ½	3	"	"	502 52	
	E ½	11	"	"	320 00	
	Forward,				6,693 09	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

2 G. L. 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				6,693 09	
	All	29	6 N	10 W	640 00	
	All fracl	31	"	"	642 78	
	All	33	"	"	640 00	
	All	13	6 N	11 W	640 00	
	All	15	"	"	640 00	
	E ½	19	"	"	320 00	
	All	21	"	"	640 00	
	All	23	"	"	640 00	
	All	25	"	"	640 00	
	All	27	"	"	640 00	
	E ½	33	"	"	320 00	
	All	35	"	"	640 00	
	All fracl	1	6 N	12 W	637 98	
	All fracl	3	"	"	636 17	
	All fracl	5	"	"	634 12	
	All	7	"	"	640 00	
	All	9	"	"	640 00	
	All	11	"	"	640 00	
	All	13	"	"	640 00	
	All	15	"	"	640 00	
	All	17	"	"	640 00	
	Forward,				19,484 14	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

2 G. L. 79 B.
(Old G. 130.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				19,484 14	
	All	21	6 N	12 W	640 00	
	All	23	"	"	640 00	
	All	27	"	"	640 00	
	All	33	"	"	640 00	
	N ½ of NW ¼	35	"	"	80 00	
	All	3	6 N	14 W	640 00	
	All fracl.	5	7 N	11 W	646 78	
	All fracl.	7	"	"	645 18	
	All	9	"	"	640 00	
	All	17	"	"	640 00	
	All fracl.	19	"	"	641 21	
	All	21	"	"	640 00	
	All	29	"	"	640 00	
	All fracl.	31	"	"	642 56	
	All	33	"	"	640 00	
	All fracl.	1	7 N	12 W	643 00	
	All fracl.	3	"	"	645 98	
	All	11	"	"	640 00	
	All	13	"	"	640 00	
	All	17	"	"	640 00	
	Forward,				31,748 85	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

2 G. L. 79 R.
(Old G. 130.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Brought forward,				31,743	85	
	All fracl.	19	7 N	12 W	645	92	
	All	23	"	"	640	00	
	All	25	"	"	640	00	
	All	29	"	"	640	00	
	All	33	"	"	640	00	
	All	35	"	"	640	00	
	All fracl.	3	7 N	13 W	636	60	
	All fracl.	5	"	"	637	80	
	All	9	"	"	640	00	
	All	25	"	"	640	00	
	NE ¼; N ½ of SE ¼; SE ¼ of SE ¼	33	7 N	14 W	280	00	
	All fracl.	5	8 N	10 W	639	28	
	All fracl.	7	"	"	628	84	
	All	11	8 N	11 W	640	00	
	All fracl.	19	"	"	654	78	
	All	29	"	"	640	00	
	All fracl.	31	"	"	654	88	
	Forward,				42,286	95	

(4-18-96-500)

West of San Bernardino Principal Meridian.

REMARKS

2 G. L. 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Brought forward,				42,286	95	
	All	25	8 N	12 W	640	00	
	All	35	"	"	640	00	
	All	33	8 N	13 W	640	00	
	All fracl.	7	8 N	14 W	629	06	
	All	27	"	"	640	00	
	All	35	"	"	640	00	
	All	5	8 N	15 W	640	00	
	E ½ of NE ¼; E ½ of SE ¼	7	"	"	160	00	
	All	9	"	"	640	00	
	All	11	"	"	640	00	
	All	13	"	"	640	00	
	All	15	"	"	640	00	
	All	17	"	"	640	00	
	E ½ of NE ¼; E ½ of SE ¼	19	"	"	160	00	
	All	21	"	"	640	00	
	All	27	"	"	640	00	
	All	29	"	"	640	00	
	All	33	"	"	640	00	
	All	35	"	"	640	00	
	Forward,				53,476	01	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

2 G. L. 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.
	Brought forward,				53,476 01	
	E ½	31	9 N	15 W	320 00	
	All fracl.	5	10 N	15 W	499 17	
	E ½ of NW ¼; Lots 1, 2, 3, 4..	7	"	"	146 58	
	All	9	"	"	640 00	
	E ½ of NE ¼; E ½ of SE ¼	17	"	"	160 00	
	All	21	"	"	640 00	
	All	29	"	"	640 00	
	E ½	31	"	"	320 00	
	All	33	"	"	640 00	
	S ½	17	11 N	12 W	320 00	
	E ½ of NE ¼; E ½ of SE ¼	25	11 N	16 W	160 00	
	Forward,				57,961 76	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

2 G. L. 79 B.
(Old G. 130.)

Railroad List. **South of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				57,961 76	
	All fracl.	5	2 S	6 W	653 08	
	SE ¼	7	"	"	160 00	
	Frl. W ½ of NE ¼; SE ¼	3	5 S	3 W	239 62	
	S ½	9	"	"	320 00	
	W ½ of NW ¼; SW ¼	11	"	"	240 00	
	All	15	"	"	640 00	
	All	17	"	"	640 00	
	All	21	"	"	640 00	
	N ½; SE ¼	23	"	"	480 00	
	All	25	"	"	640 00	
	W ½	27	"	"	320 00	
	E ½; SW ¼	29	"	"	480 00	
	N ½; SE ¼; N ½ of SW ¼	33	"	"	560 00	
	All	35	"	"	640 00	
	E ½ of SW ¼; NW ¼; E ½	17	6 S	1 W	560 00	
	NW ¼ of NE ¼; E ½ of NE ¼; NW ¼	21	"	"	280 00	
	Forward,				65,454 46	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

2 G. L. 79 R.
(Old G. 130.)

Railroad List, North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Brought Forward,				65,454	46	
	S ½ of SW ¼	5	1 N	1 E	80	00	
	N ½	9	"	"	320	00	
	SW ¼	11	"	"	160	00	
	All	19	"	"	640	00	
	NE ¼	35	"	"	160	00	
	Forward,				66,814	46	

(4-15-96-500)

East of San Bernardino Principal Meridian.

REMARKS.

2 G. L. 79 R.
(Old G. 130.)

Railroad List. South of Base Line, and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Brought forward,				66,814	46	
	E ½ of NW ¼; E ½ of SW ¼ and E ½	3	3 S	1 E	478	20	
	Fracl. NE ¼; Lot 2 of NW ¼; E ½ of lot 1 of NW ¼; E ½ of SW ¼; SW ¼ of SW ¼	5	"	"	399	20	
	S ½	15	"	"	320	00	
	NW ¼	21	"	"	160	00	
	S ½	5	3 S	2 E	320	00	
	All	17	"	"	640	00	
	N ½ of NW ¼	21	"	"	80	00	
	All	13	4 S	4 E	640	00	
	E ½	15	"	"	320	00	
	All	23	"	"	640	00	
	N ½ of NE ¼; W ½	25	"	"	400	00	
	All	35	"	"	640	00	
	Total,				71,851	86	$898 50

(4-15-96-500)

East of San Bernardino Principal Meridian.

REMARKS

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to Indian Wells, for which a grant of lands was made by the Acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of two hundred and twenty-eight and fifty-nine one-hundredths (228.59-100) miles, being for the first (1st), second (2d), third (3), and fourth (4), sections of said road, starting from a point in northeast one-quarter, section 17, township 11 north, range 12 west, S. B. B. & M., and ending at a point in southwest one-quarter, section 24, township 5 south, range 7 east, S. B. B. & M.

JEROME MADDEN.

[Seal]

Sworn to and subscribed before me, this twenty-fourth day of November, 1884.

J. D. RUGGLES.

Deputy county clerk of the city and county of San Francisco, California, and ex officio deputy clerk of the Superior Court thereof, the same being a court of record.

[Seal]

United States Land Office.

Los Angeles, Cal., January 16, 1885.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above-mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of eight hundred and ninety-

eight and fifty one-hundredths (898.50-100) dollars in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.
J. W. HAVERSTICK,
Receiver.

United States Surveyor-general's Office.

San Francisco, California, November 25, 1884.

I, W. H. Brown, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 139, dated November 25, 1884, to the credit of the United States, showing that the sum of $2425.00 has been deposited as cost of survey, and $808.33 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey.....$2425.00
Office work....$ 808.33

$3233.33

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor-general.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600,Defendants' Exhibit No. 211. Stephen Potter, special examiner," and find it to be a full, true, and correct copy of the said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special examiner.

Defendant's Exhibit No. 213.

United States Land Office.

Los Angeles, California, July 13, 1885.

List No. 28.

Lands Selected by

The Southern Pacific Railroad Company.

Granted Limits.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company,
San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the second day of March, A. D. 1885.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.
[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the 23d section of the Act of Congress, approved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," and the further act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of Califor-

nia," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the first (1st) section (fifty (50) miles) of the same, commencing at a point in northwest one-quarter, section 3, township 2 north, range 15 west, S. B. B. & M., and ending at a point in northeast one-quarter, section 27, township 1, south, range 9 west, S. B. B. & M., which said section of road and telegraph has been duly accepted by the president of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

2 G. L. 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	N ½ of NE ¼.....	23	1 N	10 W	80 00	1 00

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from San Fernando to Spadra, for which a grant of lands was made by the Acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of fifty (50) miles, being for the first (1st) section of said road, starting from a point in the northwest one-quarter, section 3, township 2 north, range 15 west, S. B. B. & M., and ending at a point in the northeast one-quarter, section 27, township 1 south, range 9 west, S. B. B. & M.

JEROME MADDEN.

[Seal]

Sworn to and subscribed before me, this third day of April, 1885.

JAS. J. FLYNN,

County clerk of the city and county of San Francisco, California, and ex officio clerk of the Superior Court thereof, the same being a court of record.

[Seal]

United States Land Office.

Los Angeles, Cal., July 13, 1885.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above-mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices and that the said company have paid to the undersigned,

the receiver, the full sum of one (1) dollar in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

United States Surveyor-General's Office.

San Francisco, California.
April 4, 1885.

I, W. H. Brown, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 232, dated April 4, 1885, to the credit of the United States, showing that the sum of $2.70 has been deposited as cost of survey, and $.90-100 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey.....$2.70
Office work....$ .90

$3.60

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor-general.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 213. Stephen Potter, special examiner," and find it to be a full, true, and correct copy of the said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 215.

United States Land Office.

Los Angeles, California, April 23, 1885.

List No. 30.

Lands Selected by

The Southern Pacific Railroad Company.

Granted Limits.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the twenty-fourth day of March, A. D. 1885.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.
[Seal]

List of Lands.

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific

Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the first (1st), second (2nd), and fourth (4th) sections (one hundred and seventy-eight 59-100 (178.59) miles) of the same, commencing at a point in northeast one-quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in southwest one-quarter, section 4, township 3 south, range 1 west, San Bernardino base and meridian, which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

2G. L. 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	N ½ of NE ¼	29	1 N	3 W	80 00	
	All fracl.	19	1 N	5 W	637 97	
	All	29	"	"	640 00	
	All fracl.	31	"	"	639 26	
	SE ¼	33	"	"	160 00	
	W ½ of NW ¼; N ½ of SW ¼	17	1 N	6 W	160 00	
	N ½ of SE ¼; Fracl. N ½	19	1 N	9 W	403 76	
	Lot 1	21	1 N	10 W	27 18	
	S ½ of NE ¼; SE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼	23	"	"	320 00	
	All fracl.	19	4 N	15 W	627 00	
	S ½	5	6 N	11 W	320 00	
	All fracl.	7	"	"	644 38	
	All	17	"	"	640 00	
	All	9	7 N	12 W	640 00	
	W ½	11	7 N	13 W	320 00	
	Forward,				6,259 55	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

2 G. L. 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.
	Brought forward,				6,259 55	
	E ½	11	7 N	15 W	320 00	
	E ½	31	8 N	13 W	320 00	
	W ½	25	8 N	14 W	320 00	
	All	17	9 N	12 W	640 00	
	All fracl.	19	"	"	642 44	
	All	15	9 N	13 W	640 00	
	All	21	"	"	640 00	
	All	23	"	"	640 00	
	All	25	"	"	640 00	
	All	27	"	"	640 00	
	All	29	"	"	640 00	
	All	33	"	"	640 00	
	All	35	"	"	640 00	
	SE ¼ and N ½	15	1 S	2 W	480 00	
	Lots 3, 5 and 6	1	1 S	10 W	33 21	
	Lot 1, and NE ¼ of NW ¼	31	2 S	4 W	79 61	
	Fracl. W ½	7	2 S	6 W	281 23	
	Total,				14,496 09	$181 50

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

City and County of San Francisco. }
State of California, } ss.

I, Jerome Madden, being duly sworn, depose and say, that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to San Gorgonio, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserve lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of one hundred and seventy-eight 59-100 (178.59) miles, being for the first (1st), second (2nd), and fourth (4th) sections of said road, starting from a point in northeast one-quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in southwest one-quarter, section 4, township 3 south, range 1 west, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me, this third day of April, 1885.

JAS. J. FLYNN,
County Clerk of the city and county of San Francisco, California, and ex-officio clerk of the Superior Court thereof, the same being a court of record.
[Seal]

United States Land Office.

Los Angeles, Cal., April 23, 1885.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of one hundred and

eighty-one and 50-100 ($181.50) dollars in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

United States Surveyor-General's Office,

San Francisco, California, April 4, 1885.

I. W. H. Brown, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 234, dated April 4, 1885, to the credit of the United States, showing that the sum of $489.24 has been deposited as cost of survey and $163.08 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	$489.24
Office work	163.08
	$652.32

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor-General.

[Seal]

I certify that I have compared the foregoing document with the original, of which it purports to be a copy, marked "U. S. vs. S. P., 600, Defendants' Exhibit No. 215. Stephen Potter special examiner," and find it to be a full, true, and correct copy of the said original.

San Francisco August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 217.

United States Land Office.

Los Angeles, California, ———, 18—.

List No. 33.

Lands Selected by

The Southern Pacific Railroad Company.

Granted Limits.

United States Land Office.

Los Angeles, Cal., Sept. 14, 1885.

Presented and fees tendered and rejected for the reason that all the tracts embraced in the within lists are within the boundaries designated in the diagram furnished this office by the commissioner of the general land office of lands excepted from the grant to said railroad company by reason of their being within the limits of the Hofman survey of the Lespe rancho, and for the further

reason that all of said tracts are covered by entries made in this office in accordance with said diagram.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the twenty-fourth day of July, A. D. 1885.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in

part for the fourth (4th) section (seventy-eight 59-100 (78 59-100) miles) of the same, commencing at a point in northwest one-quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at a point in northeast one-quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian, which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

1)
2 G. L. 79 R.
(Old G. 130.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Lot 1 (or SW ¼ of SW ¼).....	19	4 N	18 W	38 94	$0 50
	Lots 1 and 2 and W ½ of NW ¼.	29	4 N	18 W	160 28	2 00
	SW ¼ of NW ¼ nd NW ¼ of SW ¼	25	4 N	19 W	80 00	1 00
	NW ¼ of SE ¼; E ½ of SW ¼; SW ¼ of SW ¼.....	25	4 N	19 W	160 00	2 00
	Forward,				440 22	$5 50

(4-15-96-500.)

West of San Bernardino Principal Meridian.

REMARKS.

Lot 1, Sec. 19, Tp. 4 N., R. 18 W, S. B. M.
Herman Haines, T. C. Entry No. 1153, July 17, 1885.

Lots 1 and 2 and W ½, NW ¼, Sec. 29, Tp. 4 N., R. 18 W., S. B. M.
Lusieno Cequieros, D. S. No. 2548, Dec. 11, 1883.

SW of NW ¼ and NW of SW ¼, Sec. 25, 4 N, 19 W, S. B. M.
Hugh Manning, T. C. No. 560, Nov. 24, 1883.

NW of SE ¼, E ½, SW ¼ and SW of SW ¼, Sec. 25, 4 N, 19 W, S. B. M.
Isaac Whitaker, Final Home No. 371, Nov. 26, 1881.
Patent issued April 10, 1882.

2 G. L. 79 B.
(Old G. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	Name of Range	Area. Acres.	.100.	Fees of Register and Receiver.
	Brought forward,				440	22	$5 50
	E ½ of SE ¼.....	25	4 N	19 W	80	00	1 00
	S ½ of SE ¼.....	27	4 N	19 W	80	00	1 00
	SW ¼ of SE ¼; SE ¼ of SW ¼...	33	4 N	19 W	80	00	1 00
	E ½ of SE ¼.....	33	4 N	19 W	80	00	1 00
	Forward,				760	22	$9 50

(4-15-96-500.)

West of San Bernardino Principal Meridian.

REMARKS.

E ½ SE ¼, Sec. 25, Tp. 4 N, R. 19 W, S. B. M.
Pascual Real, Homestead No. 1894, filed Oct. 7, 1884.

S ½ SE ¼, Sec. 27, Tp. 4 N, R. 19 W, S. B. M.
Joshua A. Conaway, Final Homestead No. 276, filed Feb. 28, 1881.

SW of SE ¼ and SE of SW ¼, Sec. 33, Tp. 4 N, 19 W, S. B. M.
Abner McCreary, Final Home No. 203, April 9, 1880, patent Feby. 13, 1884.

E ½ SE ¼ Sec. 33, Tp. 4 N, R. 19 W, S. B. M.
James Heaney, Final Home No. 107, September 9, 1878.

2)
2 G. L. 79 B.
(Old G. 130.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				760 22	$9 50
	N ½ of SE ¼; SW ¼ of SE ¼; SE ¼ of SW ¼.....	35	4 N	19 W	160 00	2 00
	N ½ of SW ¼.....	35	4 N	19 W	80 00	1 00
	Total,				1,000 22	$12 50

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

N ½ SE ¼, SW of SE ¼ and SE of SW ¼, Sec. 35, Tp. 4 N., R. 19 W., S. B. M.
Thomas Marple, Final Home No. 108, September 10, 1878.

N ½ SW ¼, Sec. 35, Tp. 4 N., R. 19 W., S. B. M.
Jesse M. Janes, Homestead No. 1963, Dec, 13, 1884.

City and County of San Francisco. } ss.
State of California, }

I, Jerome Madden, being duly sworn, depose and say, that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from San Fernando to Mojave, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of seventy-eight and 59-100 (78 59-100) miles, being for the fourth (4th) section of said road, starting from a point in northwest one-quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at a point in northeast one-quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me, this thirteenth day of August, 1885.

JAS. J. FLYNN,

County Clerk of the city and county of San Francisco, California, and ex-officio clerk of the Superior Court thereof, the same being a court of record.

[Seal]

United States Land Office.

Los Angeles, Cal., ———, 18—.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the under-

signed, the receiver, the full sum of twelve 50-100 dollars ($12.50-100) in full payment and discharge of said fees.

_____ _____,
Register.

_____ _____,
Receiver.

United States Surveyor-General's Office,

San Francisco, California, August 13, 1885.

I, W. H. Brown, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 57, dated August 13, 1885, to the credit of the United States, showing that the sum of $33.75 has been deposited as cost of survey, and $11.25 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	$33.75
Office work	11.25
	$45.00

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor-General.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 217. Stephen Potter, special examiner," and find it to be a full, true, and correct copy of the said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 219.

United States Land Office

Los Angeles, California, March 15, 1886.

List No. 34.

Lands Selected by

The Southern Pacific Railroad Company.

Granted Limits.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the fourth day of March, A. D. 1886.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.
[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of

the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the second (2nd), third (3rd), fourth (4th), and fifth (5th) sections (two hundred and ninety-six 96-100 (296 96-100) miles of the same, commencing at a point in northeast one-quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in southeast one-quarter, section 26, township 16 south, range 22 east, San Bernardino base and meridian, which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

2 G. L. 79 R.
(Old G. 180.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	E ½ of NE ¼	3	1 N	4 W	80	00	
	N ½ of NE ¼	11	"	"	80	00	
	All	13	9 N	14 W	640	00	
	All	15	"	"	640	00	
				South of Base Line and			
	N ½ of SW ¼; N ½ of NW ¼	13	1 S	2 W	160	00	
	All fracl.	1	2 S	1 W	634	71	
	All fracl.	11	"	"	612	92	
	NE ¼	21	"	"	160	00	
	Fracl. E ½	23	"	"	314	56	
	NW ¼ and fracl. E ½	25	"	"	470	40	
	All	11	2 S	4 W	640	00	
	S ½ of NE ¼	17	"	"	80	00	
	N ½ of NW ¼; SW ¼ of NW ¼	21	"	"	120	00	
	All	23	"	"	640	00	
	All	25	"	"	640	00	
	W ½ of NW ¼	29	"	"	80	00	
	Lots 1, 2, 3, 4, 5 and 6; E ½ of NE ¼; E ½ of SE ¼, and NW ¼ of SE ¼	31	3 S	1 W	375	50	
	Forward,				6,368	09	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

West of San Bernardino Principal Meridian.

2 G. L. 79 R.
(Old G. 130.)

Railroad List.

South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver
	Brought forward,				6,368 09	
	E ½ and Fracl. NW ¼	19	4 S	3 W	486 12	
	All	29	"	"	640 00	
	Fracl. SW ¼ and E ½	31	"	"	485 81	
	SW ¼ and N ½	33	"	"	480 00	
	Fracl. W ½	3	5 S	3 W	318 49	
	All fracl.	5	"	"	632 20	
	Fracl. N ½	7	"	"	314 40	
	N ½	9	"	"	320 00	
	NW ¼	29	"	"	160 00	
	All fracl.	3	5 S	4 W	654 56	

South of Base Line and

	E ½	23	5 S	7 E	320 00	
	NE ¼	11	8 S	10 E	160 00	
	Total,				11,339 67	$142 00

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

East of San Bernardino Principal Meridian.

City and County of San Francisco. }
State of California, } ss.

I, Jerome Madden, being duly sworn, depose and say, that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from a point in northeast one-quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian, to a point in northwest one-quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, and from a point in northeast one-quarter, section 27, township 1 south, range 9 west, San Bernardino base and meridian, to a point in southeast one-quarter, section 26, township 16 south, range 22 east, San Bernardino base and meridian, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that said lands are vacant, unappropriated, and are not interdicted mineral, nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a distance of two hundred and ninety-six 96-100 (296.96) miles, being for second (2nd), third (3rd), fourth (4th), and fifth (5th) sections of said road, starting from a point in northeast one-quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in south-

east one-quarter, section 26, township 16 south, range 22 east, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this ninth day of March, 1886. Witness my hand and notarial seal.

HOLLAND SMITH,

Notary public in and for the city and county of San Francisco, State of California.

[Seal]

United States Land Office.

Los Angeles, Cal., March 15, 1886.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of one hundred and forty-two 00-100 ($142.00) dollars in full payment and discharge of said fees.

J. D. BETHUNE,
Register.

J. W. HAVERSTICK,
Receiver.

(8-23-93-250.) G. 163.

San Francisco, California, March 8, 1886.

The Southern Pacific Railroad Company pays under protest the expenses of surveying the lands described in this list, No. 34, Los Angeles District, granted limits, because it claims to be exempted from such payment by provisions of the grant of lands to it by Congress.

JEROME MADDEN,
Land agent of the Southern Pacific Railroad Company.

United States Surveyor-General's Office,

San Francisco, California, March 10, 1886.

I, R. P. Hammond, Jr., surveyor-general for the United States in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company

has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 255, dated March 9, 1886, to the credit of the United States, showing that the sum of $382.71 has been deposited as cost of survey, and $127.58 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	$382.71
Office work	127.58
	$510.29

In testimony whereof, I have hereunto set my hand and official seal.

R. P. HAMMOND, Jr.,
Surveyor-General.

[Seal]

I certify that I have compared the foregoing document with the original, of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 219. Stephen Potter, special examiner," and find it to be a full, true, and correct copy of the said original.

San Francisco,
August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 221.

United States Land Office

Los Angeles, California, ———, 1891.

List No. 63.

Lands Selected by

The Southern Pacific Railroad Company.

Granted Limits.

Branch Line.

United States Land Office.

Los Angeles, Cal., July 7, 1891.

Offered, fees tendered and rejected by this office under the rule laid down in Gordon vs. Southern Pacific Railroad Company (5 L. D. 691), wherein it is held "that lands embraced within the indemnity withdrawal for the Atlantic & Pacific R. R. Co. were excepted from the grant to the S. P. R. R. Co."

W. H. SEAMANS,
Register.

G. W. BRYANT,
Receiver.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pa-

cific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the first day of July, A. D. 1891.

JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled "An act to extend the time for the con-

struction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the second (2nd) section (fifty (50) miles) of the same, commencing at Spadra and ending at San Gorgonio, which said section of road and telegraph has been duly accepted by the President of the United States as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

4759

2 G. L. 79 B.
(Old G. 130.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	E ½	13	1 N	8 W	320 00	4 00

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say, that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Spadra to San Gorgonio, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of fifty (50) miles, being for the second (2nd) section of said road, starting from a point in northeast one-quarter, section 27, township 1 south, range 9 west, San Bernardino base and meridian, and ending at a point in southwest one-quarter, section 4, township 3 south, range 1 west, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this second day of July, 1891. Witness my hand and notarial seal.

E. B. RYAN,
Notary public in and for the city and county of San Francisco, in the State of California.

[Seal]

United States Land Office.

Los Angeles, Cal., ———, 1891.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the under-

signed, the receiver, the full sum of four ($4.00) dollars, in full payment and discharge of said fees.

(erroneously signed)
W. H. Seamans,
Register.

_____,
Receiver.

United States Surveyor-General's Office,

San Francisco, California, July 2, 1891.

I, Wm. H. Pratt, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 1, dated July 2, 1891, to the credit of the United States, showing that the sum of $10.80 has been deposited as cost of survey, and $3.60 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	$10.80
Office work	3.60
	$14.40

In testimony whereof, I have hereunto set my hand and official seal.

WM. H. PRATT,
Surveyor-General.

[Seal]

I certify that I have compared the foregoing document with the original, of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 221. Stephen Potter, special examiner," and find it to be a full, true, and correct copy of the said original.

San Francisco,

August 13, 1896.

STEPHEN POTTER,
Special Examiner.

[Endorsed]: Filed Sept. 18, 1896. Wm. M. Van Dyke, Clerk.

United States vs. Southern Pacific Railroad Company et al. No. 600. Exhibits, Volume III.

[Endorsed]: Filed Sep. 18, 1896. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit No. 223.

United States Land Office.

Los Angeles, California, May 25, 1883.

List No. 5,

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company,

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the tenth day of May, A. D. 1883.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.
[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company

of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California,

under and by virtue of the twenty-third section of the act of Congress, approved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the second (2nd), third (3rd), and fourth (4th) sections (one hundred and seventy-eight and fifty-nine one-hundredths (178.59) miles) of the same, commencing at a point in northeast one-quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in southwest one-quarter of section 24, township 5 south, range 7 east, San Bernardino base and meridian, which

said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

1)
2 G. L. 79 B.
(Old G. 130.)

Railroad List.

North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
All	.....	21	2 N	1 E	640 00	8 00
	Forward,				640 00	$8 00

(4-15-96-500)

East of San Bernardino Principal Meridian.

REMARKS.

2)
2 G. L. 79 R.
(Old G. 130.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Brought forward,				640	00	8 00
	Lot 2 and SW ¼ of NE ¼.....	5	3 N	19 W	79	85	1 00
	Fracl. NW ¼.....	7	"	"	161	28	2 00
	All fracl.....	1	3 N	20 W	216	31	3 00
	Lot 4.....	3	"	"	36	60	50
	Lot 1 in NE ¼.....	5	"	"	16	05	1 00
	Lots 2 and 3 in NW ¼.....	5	"	"	60	44	
	Lots 1 and 2 in SE ¼; SW ¼ of SE ¼.....	5	"	"	118	07	1 50
	SE ¼ of SE ¼.....	5	"	"	40	00	50
	Lots 3, 4 and 5 in SW ¼.....	5	"	"	84	20	1 00
	SE ¼ of SW ¼.....	5	"	"	40	00	50
	Lots 6 and 7.....	7	"	"	56	38	50
	Lots 2 and 3.....	9	"	"	36	94	50
	NE ¼ of NE ¼	11	"	"	40	00	50
	W ½ of NE ¼; W ½ of SE ¼....	17	4 N	19 W	160	00	2 00
	All fracl.....	19	"	"	562	18	7 00
	NE ¼ of NW ¼; Lots 1, 2, 3 and 4; SE ¼ of NW ¼; W ½ of NE ¼.....	29	"	"	266	78	3 50
	Forward,				2,615	08	$33 00

(4-15-96.500)

West of San Bernardino Principal Meridian.

REMARKS.

Geo. N. Green D. S. 773, Settled Jany. 1, 71. Filed Mch. 9, 75. Expired.

Henry T. Cook, No. 1713, Settled Aug. 15, 78, Filed Feb. 24, 79. Illegal. Improperly allowed by R. & R.

T. C. E. No. 24, Henry T. Cook. Feby. 24, 79. Illegal. Canceled by Com'r May 25, '81.

B. J. Robinson, D. S. 724, Mch. 15, 72, Jany. 13, 75. Illegal. Expired.

3.)
2 G. L. 79 B
(Old G. L. 130.)

Railroad List. **North of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	Area. .100	Fees of Register and Receiver.
	Brought forward,				2,615	08	$ 33 00
	Lots 3 and 4	13	4 N	20 W	80	34	1 00
	SE ¼	15	"	"	160	00	2 00
	All fracl	23	"	"	409	23	5 00
	Lots 1, 2, 3, 4, and 5; SW ¼ of NW ¼	25	"	"	131	43	1 50
	All fracl	27	"	"	421	02	5 50
	All	29	"	"	640	00	8 00
	Fracl. W ½	31	"	"	310	94	4 00
	All Fracl	33	"	"	277	06	3 50
	Lot 1; NW ¼ of NE ¼	35	"	"	79	98	1 00
	Lots 2, 3, 4, 5, 7, 8, 9, and 10; SE ¼ of NW ¼. NE ¼ of SW ¼; NE ¼ of SE ¼	35	"	"	322	43	4 00
	Forward,				5,447	51	$68 50

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

Wm. Frey, D. S. 702; Feby. 26, 71; Dec. 31, 74. Expired by Limitation.

4)
2 G. L. 79 R.
(Old G. 130.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				5447 51	$68 50
	SW ¼ of NE ¼; Lots 2 and 3; SE ¼ of NW ¼; SE ¼ of SE ¼; N ½ of SE ¼; NE ¼ of SW ¼..	7	5 S	5 W	322 02	4 00
	All of fracl.	7	5 S	7 W	587 59	7 50
	E ½ of SE ¼; NW ¼ of SE ¼...	21	6 S	1 W	120 00	1 50
	SW ¼ of SE ¼; E ½ of SW ¼; W ½ of SE ¼.....	33	"	"	160 00	2 00
	E ½; E ½ of NW ¼.....	35	"	"	400 00	5 00
	Fracl. SW ¼.....	7	6 S	2 W	159 20	2 00
	All	17	"	"	640 00	8 00
	E ½ of NE ¼.....	27	"	"	80 00	1 00
	W ½ of NE ¼; NW ¼; SE ¼; NE ¼ of SW ¼; S ½ of SW ¼	27	"	"	520 00	6 50
	NW ¼ of SW ¼.....	27	"	"	40 00	50
	S ½.....	29	"	"	320 00	4 00
	SE ¼.....	31	"	"	160 00	2 00
	NE ¼; W ½.....	33	"	"	480 00	6 00
	S ½ of NW ¼ (or lot 1 of NW ¼); S ½ of SE ¼; SW ¼.....	3	6 S	3 W	320 00	4 00
	Forward,				9,756 32	$122 50

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

5)
2 G. L. 79 B.
(Old G. 130.)

Railroad List. South of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				9756 32	$ 122 50
	N ½; N ½ of SW ¼; SE¼; SE ¼ of SW ¼.....	11	6 S	3 W	600 00	7 50
	N ½; SE¼.....	23	"	"	480 00	6 00
	Lots 3, 4, 5 and 6; NW ¼ of SE ¼; SE ¼ of SE ¼.....	35	6 S	8 W	196 89	2 50
	E ½ of NW¼; NE ¼ of SW ¼..	35	"	"	120 00	1 50
	S ½ of NE ¼; S ½ of NW ¼.....	1	7 S	2 W	160 00	2 00
	SE ¼.....	3	"	"	320 00	4 00
	Fracl. N ½ ; SW¼.....	5	"	"	482 08	6 00
	All	9	"	"	640 00	8 00
	All	11	"	"	640 00	8 00
	All	15	"	"	640 00	8 00
	All fracl.....	19	"	"	420 48	5 50
	All	21	"	"	640 00	8 00
	All fracl.....	29	"	"	346 18	4 50
	Lot 1.....	33	"	"	15 22	
	Total,				15,457 17	194 00

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

State Indemnity Selection No. 307. Jany. 5, '74. Canceled Comr's letter "C," Feb. 8, '77, and Dec. 12, 1879, "G."

G. 399. 5-2-89-500.

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to San Fernando and from Spadra to Indian Wells, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, indemnity belt, on each side of the line of route for a distance of one hundred and seventy-eight and fifty-nine one-hundredths (178.59) miles, being for the second (2nd), third (3rd), and fourth (4th) sections of said road, starting from a point in the northeast one-quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in the southwest one-quarter of section 24, township 5 south, range 7 east, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this fourteenth day of May, 1883.

WILLIAM T. SESNON,

County clerk of the city and county of San Francisco, California, and ex-officio clerk of the Superior Court thereof, the same being a Court of record.

[Seal]

United States Land Office.

Los Angeles, Cal., May 25, 1883.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, indemnity belt on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the act of Congress, approved July 1, 1864, and contemplated by

the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of one hundred and ninety-four dollars ($194.00) in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

United States Surveyor-General's Office.

San Francisco, California, May 15, 1883.

I, W. H. Brown, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 269, dated May 15, 1883, to the credit of the United States, showing that the sum of $521.68 has been deposited as cost of survey, and $173.89 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	$521.68
Office work	173.89
	$695.57

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor-general.

[Seal]

UNITED STATES LAND OFFICE,

.....CALIFORNIA,

.....189..

List No. .....

LANDS SELECTED

BY THE

SOUTHERN PACIFIC RAILROAD COMPANY

INDEMNITY LIMITS.

LIST OF LANDS LOST BY THE

Southern Pacific Railroad Company of California, within 20 miles of the line of its Railroad, in lieu of which selections were made at Los Angeles, Cal.,

UPON INDEMNITY LIST No. 5.

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 5.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	Lot 21; SW ¼ of NE ¼	5	3 N	19 W	79 85		
	Fracl. NW ¼	7	"	"	161 28		
	All fracl.	1	3 N	20 W	216 31		
	Lot 4	3	"	"	36 60		
	Lot 1 in NE ¼	5	"	"	16 05		
	Lots 2 and 3 in NW ¼	5	"	"	60 44		
	Lots 1 and 2 in SE ¼; SW ¼ of SE ¼	5	"	"	118 07		
	SE ¼ of SE ¼	5	"	"	40 00		
	Lots 3, 4 and 5 in SW ¼	5	"	"	84 20		
	SE ¼ of SW ¼	5	"	"	40 00		
	Lots 6 and 7	7	"	"	56 38		
	Lots 2 and 3	9	"	"	36 94		
	NE ¼ of NE ¼	11	"	"	40 00		
	W ½ of NE ¼; W ½ of SE ¼	17	4 N	19 W	160 00		
	All fracl.	19	"	"	562 18		
	NE ¼ of NW ¼; lots 1, 2, 3 and 4; SE ¼ of NW ¼; W ½ of NE ¼	29	"	"	266 78		
	Lots 3 and 4	13	4 N	20 W	80 34		
	SE ¼	15	"	"	160 00		
	All fracl.	23	"	"	409 23		
	Lots 1, 2, 3, 4 and 5 SW ¼ of NW ¼	25	"	"	131 43		
	All fracl.	27	"	"	421 02		

Continued.

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
E ½ of NW ¼	25	1 S	14 W	80 00		
SE ¼	27	"	"	160 00		
Lot 1	3	3 S	5 W	52 38		
SE ¼	5	"	"	160 00	212 38	
Lot 2	1	2 S	14 W	39 36		
NW ¼ of SW ¼	11	2 S	3 W	40 00		
Lot 2	31	2 S	7 W	37 15	77 15	
SE ¼ of SE ¼	25	1 S	14 W	40 00		
E ½ of NE ¼	11	"	"	80 00	120 00	
Lot 6	3	"	"	39 99		
Lot 4	19	1 S	12 W	43 27		
SW ¼ of SW ¼	27	1 S	14 W	40 00	83 27	
SW ¼ of SW ¼	11	2 S	3 W	40 00		
Lot 2	3	3 S	5 W	52 11		
SE ¼ of SW ¼	11	2 S	3 W	40 00		
Lot 3	13	"	"	39 76		
SW ¼	5	1 S	15 W	160 00		
N ½; SE ¼; N ½ of SW ¼	9	"	"	560 00		
Lot 1	1	2 S	14 W	39 79		
All that part in Rancho Lomas de Santiago	1	4 S	8 W	228 88	268 67	
W ½ of SW ¼	25	1 S	14 W	80 00		
NE ¼	17	1 S	15 W	160 00		
S ½; S ½ of NE ¼	5	2 S	5 W	400 00		
Fracl. NE ¼	9	1 S	14 W	140 00		
E ½	15	2 S	13 W	320 00		
All that part in Rancho San Jacinto Nuevo	31	3 S	1 W	104 50	424 50	

Continued.

Account Continued.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.	Remarks.
All	29	4 N	20 W	640 00		
Fracl. W ½	31	"	"	310 94		
All fracl.	33	"	"	277 06		
Lot 1; NW ¼ of NE ¼	35	"	"	79 98		
Lots 2, 3, 4, 5, 7, 8, 9 and 10; SE ¼ of NW ¼; NE ¼ of SW ¼; NE ¼ of SE ¼	35	"	"	322 43		
South of Base Line and West of San Bernardino Principal Meridian.						
E ½ of SW ¼; NW ¼ of SE ¼	33	6 S	1 W	120 00		
Total,				4,927 51		

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
All		29	1 S	14 W	640 00		
S ½		17	1 S	15 W	320 00		
S ½ of NW ¼		1	2 S	14 W	80 00		
All that part in Rancho Las Ciengas and Cienga O. Paso de la Tiefera		11	"	"	200 00	280 00	
Lots 1 and 2		5	3 S	13 W	79 04		
Lot 3		3	3 S	5 W	51 83		
Fracl. NW ¼		5	"	"	181 75		
N ½ of SE ¼		9	3 S	8 W	80 00	213 58	
N ½ of NW ¼; SE ¼ of NW ¼		27	2 S	11 W	120 00		
	Total,				4,929 81		

Railroad List.

North of Base Line and East of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 5.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	All	21	2 N	1 E	640		

South of Base Line and West of San Bernardino Principal Meridian.

	SW ¼ of NE ¼; lots 2 and 3 SE ¼ of NW ¼; SE ¼ of SE ¼; N ½ of SE ¼; NE ¼ of SW ¼	7	5 S	5 W	322 02	
	All fracl.	7	5 S	7 W	587 59	
	E ½ of SE ¼; NW ¼ of SE ¼	21	6 S	1 W	120 00	
	SW ¼ of SE ¼	33	"	"	40 00	
	E ½; E ½ of NW ¼	35	"	"	400 00	
	Fracl. SW ¼	7	6 S	2 W	159 20	
	All	17	"	"	640 00	
	E ½ of NE ¼	27	"	"	80 00	
	W ½ of NE ¼; NW ¼; SE ¼; NE ¼ of SW ¼ and S. ½ of SW ¼	27	"	"	520 00	
	NW ¼ of SW ¼	27	"	"	40 00	
	S ½	29	"	"	320 00	
	SE ¼	31	"	"	160 00	
	NE ¼; W ½	33	"	"	480 00	
	S ½ of NW ¼ (or Lot. 1 of NW ¼); S ½ of SE ¼; SW ¼	3	6 S	3 W	320 00	
	N ½; N ½ of SW ¼; SE ¼; SE ¼ of SW ¼	11	"	"	600 00	
	N ½; SE ¼	23	"	"	480 00	

Continued.

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
All	33	1 S	14 W	640 00		
N ½	33	1 S	15 W	320 00		
All that part in Rancho La Punte	13	1 S	10 W	585 80		
Fracl. NW ¼ of NW ¼	19	2 S	13 W	40 79		
Fracl. N ½ of NE ¼	1	3 S	3 W	80 68	121 47	
NE ¼ of NE ¼	31	2 S	13 W	40 00		
S ½	33	1 S	15 W	320 00		
Fracl S ½ of NW ¼	19	2 S	13 W	80 76	400 76	
NE ¼	13	3 S	3 W	160 00		
All	25	1 S	15 W	640 00		
S ½ of NW ¼	1	3 S	3 W	80 00		
N ½; SE ¼; NE ¼ of SW ¼	5	2 S	2 W	520 00		
SE ¼ of SW ¼	5	"	"	40 00		
N ½	25	"	"	320 00		
NE ¼	35	1 S	15 W	160 00		
N ½; SE ¼	27	2 S	2 W	480 00		
S ½	25	"	"	320 00		
All that part in Ranchos San Francisquito, Potrero de Felipe Lugo and Potrero Grande	27	1 S	11 W	608 89		
N ½; SE ¼	35	2 S	2 W	480 00		

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.	Remarks.
	Lots 3, 4, 5 and 6; NW ¼ of SE ¼; SE ¼ of SE ¼	35	6 S	8 W	196	89		
	E ½ of NW ¼; NE ¼ of SW ¼	35	"	"	120	00		
	S ½ of NE ¼; S ½ of NW ¼	1	7 S	2 W	160	00		
	S ½	3	"	"	320	00		
	Fracl. N ½; SW ¼	5	"	"	482	08		
	All	9	"	"	640	00		
	All	11	"	"	640	00		
	All	15	"	"	640	00		
	All fracl.	19	"	"	420	48		
	All	21	"	"	640	00		
	All fracl.	29	"	"	346	18		
	Lot 1	33	"	"	15	22		
	Total,				10,529	66		

Account Continued.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
SE ¼	1	3 S	8 W	160 00		
SW ¼ of SW ¼	3	"	"	40 00	200 00	
Fracl. W ½ of NE ¼; SE ¼ of NW ¼	5	"	"	120 60		
NE ¼	15	3 S	3 W	160 00		
W ½	15	"	"	320 00		
N ½	21	"	"	320 00		
Fracl. SW ¼	31	"	"	162 08	482 08	
All	17	2 S	11 W	640 00		
All	19	"	"	640 00		
All	29	"	"	640 00		
E ½	27	2 S	13 W	320 00		
All that part of E ½ in Rancho San Jacinto Nuevo	7	4 S	3 W	96 14	416 14	
All that part in City Lands in Los Angeles	3	2 S	13 W	636 00		
N ½	29	3 S	3 W	320 00		
SE ¼ of NE ¼	1	2 S	14 W	40 00		
Total,				10,531 74		

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600. Defendants' Exhibit No. 223. Stephen Potter, special examiner," and find it to be a full, true, and correct copy of the said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special examiner.

Defendant's Exhibit No. 225.

United States Land Office.

Los Angeles, California, July 19, 1884.

List No. 6.

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company,

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been con-

tinuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the thirteenth day of June, A. D. 1884.

JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company

of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company of California, under and by virtue of the twenty-third section of the act of Congress, approved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled, "An act to extend the time for the construction of the South ern Pacific Railroad in the State of California," and the

joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the second (2nd), third (3rd), and fourth (4th) sections (one hundred and seventy-eight and fifty-nine one-hundredths (178.59) miles) of the same, commencing at a point in northeast one-quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in southwest one-quarter of section 24, township 5 south, range 7 east, San Bernardino base and meridian, which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,
Land agent of the Southern Pacific Railroad Company.

2 G. L. 79 R.
(Old G. 130.)

Railroad List. **South of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	Lots 1, 2, 3, 4, 5, 6; NW ¼ of SE ¼ and W ½ of NE ¼	31	5 S	4 W	328	04	
	SE ¼	33	6 S	2 W	160	00	
	Fracl. SW ¼	5	6 S	4 W	120	01	
	Lots 1 and 2	7	"	"	8	62	
	Fracl. SE ¼; W ½ and NW ¼ and Lot 1 in SW ¼	9	"	"	259	59	
	All fracl.	19	"	"	215	99	
	Lots 1, 2 and 3	21	"	"	39	51	
	NE ¼	23	"	"	160	00	
	All fracl.	27	"	"	336	43	
	Lots 1, 2 and 3	35	"	"	78	07	
	Fracl. W ½	7	7 S	2 W	355	20	
	North and West of San Bernardino Meridian.						
	W ½ of NW ¼	5	7 N	15 W	80	00	
	Total,				2,141	46	$27 00

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

G. 96. (7-25-91-250.)

City and County of San Francisco. }
State of California, } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to San Fernando and from Spadra to Indian Wells, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, indemnity belt, on each side of the line of route for a distance of one hundred and seventy-eight and fifty-nine one-hundredths (178.59) miles, being for the second (2nd), third (3rd), and fourth (4th) sections of said road, starting from a point in the northeast one-quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in the southwest one-quarter of sec-

tion 24, township 5 south, range 7 east, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this twenty-seventh day of June, 1884.

WILLIAM T. SESNON,

County clerk of the city and county of San Francisco, California, and ex-officio clerk of the Superior Court thereof, the same being a Court of record.

[Seal]

United States Land Office.

Los Angeles, Cal., July 19, 1884.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct, and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limits of the exterior ten (10) miles indemnity belt, on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any home-

stead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of twenty-seven ($27.00) dollars, in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

United States Surveyor-General's Office.

San Francisco, California, July 9, 1884.

I, W. H. Brown, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 6, dated July 9, 1884, to the credit of the United States, showing that the sum of $72.27 has been deposited as cost of survey, and $24.09 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey $72.27
Office work 24.09

$96.36

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor-general.

[Seal]

United States Land Office.

———, California, ———, 189—.

List No. —.

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

LIST OF LANDS

LOST BY THE

SOUTHERN PACIFIC RAILROAD COMPANY

OF CALIFORNIA,

Within 20 miles of the line of its Railroad, in lieu of which selections were made at Los Angeles, Cal.,

UPON INDEMNITY LIST No. 5.

Railroad List.

South of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 6.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	Lots 1, 2, 3, 4, 5 and 6; NW ¼ of SE ¼; W ½ of NE ¼	31	5 S	4 W	328 04		
	SE ¼	33	6 S	2 W	160 00		
	Fracl. SW ¼	5	6 S	4 W	120 01		
	Lots 1 and 2	7	"	"	8 62		
	Fracl. SE ¼; W ½ of NW ¼; lot 1 in SW ¼	9	"	"	259 59		
	All fracl.	19	"	"	215 99		
	Lots 1, 2 and 3	21	"	"	39 51		
	NE ¼	23	"	"	160 00		
	All fracl.	27	"	"	336 43		
	Lots 1, 2 and 3	35	"	"	78 07		
	Fracl. W ½	7	7 S	2 W	355 20		
	Total,				2,061 46		

North of Base Line and West of San Bernardino Principal Meridian.

W ½ of NW ¼	5	7 N	15 W	80 00	$27 00	
				2,141 46		

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Remarks.
N ½	7	2 S	5 W	320	00	
Fracl. SW ¼	7	3 S	5 W	178	39	
N ½ of SW ¼; SE ¼ of SW ¼	5	"	"	120	00	
SW ¼ of SW ¼	5	"	"	40	00	
NE ¼	7	"	"	160	00	
N ½ of SE ¼	7	"	"	80	00	240 00
All that part in Jurupa Rancho	23	2 S	7 W	207	16	
SW ¼ of NE ¼	1	2 S	14 W	40	00	
SW ¼	21	3 S	3 W	160	00	
S ½	7	2 S	5 W	320	00	
S ½ of NE ¼	1	3 S	3 W	80	00	
N ½; NE ¼ of SE ¼	1	2 S	5 W	360	00	
Total,				2,065	55	
N ½ of SW ¼	29	3 S	3 W	80	00	
				2,145	55	

* Mem. Nov. 26, '87: The tracts shown on this line sent to Henry Beard to-day in a supplemental list, it having been omitted by mistake from the original.

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600. Defendants' Exhibit No. 225. Stephen Potter, special examiner," and find it to be a full, true and correct copy of the said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special examiner.

Defendant's Exhibit No. 227.

United States Land Office.

Los Angeles, California, January 16, 1885.

List No. 7.

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

Branch Line.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said

company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the eighteenth day of November, A. D. 1884.

JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company

of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, approved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line

from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled, "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the second (2nd), third (3rd), and fourth (4th) sections (one hundred and seventy-eight and fifty-nine one-hundredths (178.59) miles) of the same, commenciag at a point in the northeast one-quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in the southwest one-quarter of section 24, township 5 south, range 7 east, San Bernardino base and meridian, which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

2 G. L. 79 B.
(Old G. 130.)

Railroad List. North of Base Line, and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.
	W ½ of NE ¼; W ½ of SE ¼ and fracl. W ½	7	8 N	15 W	408	16	
	W ½ of NE ¼; W ½ of SE ¼ and fracl. W ½	19	"	"	471	42	
	All fracl.	31	"	"	636	70	
	All	1	8 N	17 W	640	00	
	All	3	"	"	640	00	
	All fracl.	9	"	"	456	00	
	All	11	"	"	640	00	
	N ½	13	"	"	320	00	
	N ½	15	"	"	320	00	
	All fracl.	19	"	"	238	26	
	Lot 1	27	"	"	8	25	
	All fracl.	29	"	"	458	49	
	All fracl.	31	"	"	640	48	
	All	33	"	"	640	00	
	All fracl.	35	"	"	375	04	
	Fracl. W ½	31	9 N	15 W	308	00	
	All	25	9 N	17 W	640	00	
	S ½	27	"	"	320	00	
	Lots 1, 2, 3, 4 and E ½	33	"	"	456	00	
	All	35	"	"	640	00	
	Forward,				**9,316**	**80**	

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS.

2 G. L. 79 R.
(Old G. 130.)

Railroad List. **South of Base Line and**

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.
	Brought forward,				9,316 80	
	Fracl. S ½	31	5 S	3 W	313 49	
	S ½ of SW ¼	33	"	"	80 00	
	Lot 1; NE ¼ of NW ¼	7	5 S	5 W	81 05	
	S ½	23	"	"	320 00	
	SE ¼	19	6 S	1 W	160 00	
	SW ¼ of SE ¼; SW ¼	21	"	"	200 00	
	All fracl.	31	"	"	625 75	
	W ½ of SW ¼; SW ¼ of NW ¼	15	6 S	4 W	120 00	
	SE ¼ and W ½	23	"	"	480 00	
	N ½ of NE ¼	1	7 S	2 W	80 00	
	Fracl. N ½	3	"	"	320 80	
	Total,				12,097 89	$151 50

(4-15-96-300)

West of San Bernardino Principal Meridian.

REMARKS

G. 96. (7-25-91-250.)

City and County of San Francisco.
State of California, } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company, as inuring to it, to aid in the construction of the railroad of said company from Mojave to San Fernando and from Spadra to Indian Wells, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, indemnity belt, on each side of the line of route for a distance of one hundred and seventy-eight and fifty-nine one-hundredths (178.59) miles, being for the second (2d), third (3d), and fourth (4th) sections of said road, starting from a point in the northeast one-quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in the southwest one-quarter of section 24, township 5 south, range 7 east, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this twenty-fourth day of November, 1884.

J. D. RUGGLES,

Deputy county clerk of the city and county of San Francisco, California, and ex-officio deputy clerk of the Superior Court thereof, the same being a Court of record.

[Seal]

United States Land Office.

Los Angeles, Cal., January 16, 1885.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, indemnity belt, on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act

of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of one hundred and fifty-one and fifty one-hundredths ($151.50) dollars, in full payment and discharge of said fees.

CHAS. R. JOHNSON.
Register.
J W. HAVERSTICK,
Receiver.

United States Surveyor-General's Office.

San Francisco, California, November 25, 1884.

I, W. H. Brown, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 137, dated November 25, 1884, to the credit of the United States, showing that the sum of $408.30 has been deposited as cost of survey and $136.10 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	$408.30
Office work.....	136.10
	$544.40

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor-general.

[Seal]

United States Land Office.

———, California, ——— 189—.

List No. —.

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

LIST OF LANDS

LOST BY THE

SOUTHERN PACIFIC RAILROAD COMPANY

OF CALIFORNIA,

Within 20 miles of the line of its Railroad, in lieu of which selections were made at Los Angeles, Cal.,

UPON INDEMNITY LIST No. 7.

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 7.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.	Remarks.
	W ½ of NE ¼; W ½ of SE ¼; fracl. W ½	7	8 N	15 W	468	16		
	W ½ of NE ¼; W ½ of SE ¼; fracl. W ½	19	"	"	471	42		
	All fracl.	31	"	"	636	70		
	All	1	8 N	17 W	640	00		
	All	3	"	"	640	00		
	All fracl.	9	"	"	456	00		
	All	11	"	"	640	00		
	N ½	13	"	"	320	00		
	N ½	15	"	"	320	00		
	Al fracl.	19	"	"	236	26		
	Lot 1	27	"	"	8	25		
	All fracl.	29	"	"	458	49		
	All fracl.	31	"	"	640	48		
	All	33	"	"	640	00		
	All fracl.	35	"	"	375	04		

Continued.

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Remarks.
All that part in Rancho San Francisco	19	4 N	17 W	480 52	
All that part in Rancho Le Liebne	17	10 N	15 W	480 00	
All	33	4 N	17 W	6407 00	
All	35	"	"	640 00	
All	3	4 N	18 W	640 00	
N ½; N ½ of SW ¼; SE ¼ of SW ¼	25	"	"	440 00	
All	27	"	"	640 00	
N ½	29	"	"	320 00	
S ½	29	"	"	320 00	

South of Base Line and West of San Bernardino Principal Meridian.

Lot 4	3	3 S	5 W	51 56	
Fracl. NW ¼	7	"	"	177 25	228 61
All that part in San Pedro Rancho	17	3 S	13 W	12 30	
All that part in city lands of Los Angeles	19	1 S	13 W	370 92	
All that part in Rancho Santa Gertrude and La Habra	35	2 S	11 W	85 89	456 81
All	33	1 S	11 W	640 00	
All	1	1 S	14 W	640 00	
All that part in city lands in Los Angeles	31	1 S	13 W	372 78	

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	Area. .100	Fees of Register and Receiver.	Remarks.
	Fracl. W ½	31	9 N	15 W	308	00		
	All	25	9 N	17 W	640	00		
	S ½	27	"	"	320	00		
	Lots 1, 2, 3, 4 and E ½	33	"	"	456	00		
	All	35	"	"	640	00		

South of Base Line and West of San Bernardino Principal Meridian.

Fracl. S ½	31	5 S	2 W	313	49		
S ½ of SW ¼	33	"	"	80	00		
Lot 1; NE ¼ of NW ¼	7	5 S	5 W	31	05		
S ½	23	"	"	320	00		
SE ¼	19	6 S	1 W	160	00		
SW ¼ of S E ¼; SW ¼	21	"	"	200	00		
All of fracl.	31	"	"	625	75		
W ½ of SW ¼; SW ¼ of NW ¼	15	6 S	4 W	120	00		
SE ¼; W ½	23	"	"	480	00		
N ½ of NE ¼	1	7 S	2 W	80	00		
Forward,				11,777	09		

Account Continued.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Remarks.
All that part in Rancho Potrero Grande	19	1 S	11 W	251	82	
Lot 3	19	1 S	12 W	43	14	
Lot 1	25	"	"	13	42	308 38
All	15	1 S	14 W	640	00	
N ½	19	"	"	320	00	
N ½; N ½ of SW ¼; SE ¼ of SW ¼	27	"	"	440	00	
Lot 12	3	1 S	12 W	14	27	454 27
All	21	1 S	14 W	640	00	
All that part in Rancho addition to San Jose	1	1 S	10 W	154	00	
W ½ of NE ¼; E ½ of NW ¼	11	1 S	14 W	160	00	314 00
N ½ of SW ¼	15	1 S	3 W	80	00	
S ½ of SW ¼	9	1 S	10 W	80	00	
S ½	19	1 S	14 W	320	00	
SW ¼	11	1 S	14 W	160	00	
NE ¼ of NE ¼	17	"	"	40	00	
NE ¼	23	"	"	160	00	200 00
All that part in Rancho San Bernardino	9	2 S	2 W	622	18	
NW ¼ of NE ¼; S ½ of NE ¼	17	1 S	14 W	120	00	
N ½; SE ¼	5	1 S	15 W	480	00	
W ½ of lot 2, of NE ¼	3	1 S	3 W	46	25	
All that part of NW ¼ of NW ¼ in Rancho Los Nogales	3	2 S	9 W	2	63	
SE ¼ of SW ¼	31	2 S	7 W	40	00	
Forward,				11,778	93	

Railroad List.

South of Base line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 7.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	Brought forward,				11,777 09		
Fracl. N ½		8	7 S	2 W	320 80		
	Total,				12,097 89	$151 80	

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Remarks.
Brought forward,				11,778	93	
Lot 8	8	1 S	14 W	40	42	
Lot 2	7	"	"	40	18	
SE ¼	17	"	"	160	00	
N ½ of SE ¼	25	"	"	80	00	320 60
Total,				12,099	53	

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600. Defendants' Exhibit No. 227. Stephen Potter, special examiner," and find it to be a full, true and correct copy of the said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special examiner.

Defendant's Exhibit No. 229.

United States Land Office.

Los Angeles, California, June 12, 1885.

List No. 12.

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southarn Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the fifth day of June, A. D. 1885.

JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company

of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, approved March 3, 1871, entitled, "An act to

incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled, "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the second (2nd) section (fifty (50) miles) of the same, commencing at a point in the northeast one-quarter of section 27, township 1 south, range 9 west, San Bernardino base and meridian, and ending at a point in the southwest one-quarter of section 4, township 3 south, range 1 west, San Bernardino base and meridian, which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

2 G. L. 79 B.
(Old G. 130.)

Railroad List. North of Base Line and

No.	Part of Section.	No. of Sec.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.
	S ½ of SE ¼; S½ of SW ¼.....	23	5 N	4 W	160 00	
	W ½	25	"	"	320 00	
	Total,				480 00	$6 00

(4-15-96-500)

West of San Bernardino Principal Meridian.

REMARKS

G. 96. (7-25-91-250.)

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Spadra to San Gorgonio, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, indemnity belt, on each side of the line of route for a continuous distance of fifty (50) miles, being for the second (2d) section of said road, starting from a point in the northeast one-quarter of section 27, township 1 south, range 9 west, San Bernardino base and meridian, and erding at a point in the southwest one-quarter of section 4, township 3 south, range 1 west, San Bernardino base and meridian.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this sixth day of June, 1885.

JAS. J. FLYNN,
County clerk of the city and county of San Francisco, California, and ex-officio clerk of the Superior Court thereof, the same being a Court of record.
[Seal]

United States Land Office.

Los Angeles, Cal., June 12, 1885.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office; and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, indemnity belt, on each side, and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the re-

ceiver, the full sum of six dollars ($6.00) in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

(8-23-93-250.) G. 163.

United States Surveyor-General's Office.

San Francisco, California, June 8, 1885.

I, W. H. Brown, surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 268, dated June 8, 1885, to the credit of the United States, showing that the sum of $16.20 has been deposited as cost of survey, and $5.40 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	$16.20
Office work	5.40
	$21.60

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor-general.

[Seal]

United States Land Office.

———, California, ———, 189—.

List No. —.

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

LIST OF LANDS

LOST BY THE

SOUTHERN PACIFIC RAILROAD COMPANY

OF CALIFORNIA,

Within 20 miles of the line of its Railroad, in lieu of which selections were made at Los Angeles, Cal.,

UPON INDEMNITY LIST No. 12.

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 12.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.	Remarks.
	S ½ of SE ¼; S ½ of SW ¼	23	5 N	4 W	160 00		
	W ½	25	"	"	320 00		
	Total,				480 00		

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Remarks.
NE ¼	15	4 N	16 W	160 00	
W ½	15	"	"	320 00	
Total,				480 00	

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600. Defendants' Exhibit No. 229, Stephen Potter, special examiner," and find it to be a full, true, and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special examiner.

Defendant's Exhibit No. 231.

United States Land Office.

Los Angeles, California, February 1, 1886.

List No. 19.

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been con-

tinuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the sixteenth day of January, A. D. 1886.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands
in the
Los Angeles Land District, California,
Selected by the
Southern Pacific Railroad Company
of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, approved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act approved July 25, 1868, entitled, "An act to extend the time for the construction of the South-

ern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the second (2nd), third (3rd), and fourth (4th) sections (one hundred and seventy-eight and fifty-nine one-hundredths (178.59) miles) of the same, commencing at a point in the northeast one-quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian, and ending at a point in the southwest one-quarter of section 24, township 5 south, range 7 east, San Bernardino base and meridian, which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad Company.

Railroad List.

South of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 19.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.	Remarks.
All		13	5 S	5 W	640 00		
SE ¼ and W ½		33	"	"	480 00		
Fracl. S ½		23	6 S	1 W	322 28		
All		25	"	"	640 00		
All		29	"	"	540 00		
SE ¼ of NE ¼; N ½ of NE ¼		33	"	"	120 00		
W ½ of NW ¼; SW ¼		35	"	"	240 00		
All		25	6 S	2 W	640 00		

Continued.

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Remarks.
N ½ of SE ¼	27	1 S	5 W	80 00	
SW ¼ and lot 1 of NW ¼	3	1 S	6 W	240 00	
E ½ of SW ¼	31	1 S	6 W	80 00	
E ½ of NE ¼	19	1 S	11 W	80 00	
SW ¼ of NW ¼; SW ¼ of SE ¼; NW ¼ of SW ¼; SE ¼ of SE ¼	21	1 S	11 W	160 00	
SE ¼	1	1 S	12 W	160 00	
S ½	13	"	"	320 00	
Fracl. E ½	3	1 S	6 W	324 89	
NW ¼ and W ½ of SW ¼	17	1 S	12 W	240 00	
NE ¼ and NE ¼ of NW ¼; S ½ of SE ¼; SE ¼ of NW ¼; SE ¼ of SW ¼; NE ¼ of SW ¼	19	"	"	400 00	
NE ¼ of SW ¼	21	1 S	11 W	40 00	
SE ¼ of SW ¼	1	1 S	12 W	40 00	
SE ¼ of SE ¼	3	"	"	40 00	
SW ¼ of SW ¼; E ½ of SW ¼	29	"	"	120 00	
NW ¼	13	3 S	3 W	160 00	
NE ¼ of SE ¼	13	1 S	13 W	40 00	
SW ¼ of SW ¼	7	"	"	40 40	
NE ¼ of NE ¼; SE ¼ of NE ¼; E ½ of SE ¼	25	"	"	160 00	
S ½ of NE ¼; NE ¼ of SE ¼	19	2 S	2 W	120 00	
W ½ of NW ¼	31	1 S	13 W	80 00	
SE ¼ of SW ¼	7	1 S	14 W	40 00	
SW ¼ of NW ¼	21	1 S	14 W	40 00	
S ½ of NW ¼	3	3 S	5 W	80 00	
E ½	35	1 S	14 W	320 00	
NE ¼	25	"	"	160 00	
SE ¼	13	"	"	160 00	

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100.	[Fees of Register and Receiver.	Remarks.
All		35	6 S	2 W	640 00		
NW ¼; E ½ of SE ¼; W ½ of SW ¼; NE ¼ of SW ¼; SE ¼ of NE ¼; N ½ of NE ¼		13	6 S	3 W	480 00		
NW ¼		15	"	"	160 00		
All		29	"	"	640 00		
All fracl		33	"	"	591 73		
All		35	"	"	640 00		
All fracl.		3	6 S	4 W	613 12		
N ½ of NE ¼; E ½ of NW ¼		9	"	"	160 00		
SW ¼		11	"	"	160 00		
S ½ of NE ¼; S ½ of NW ¼; S ½		13	"	"	480 00		
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; N ½ of SE ¼; SE ¼ of SE ¼		15	"	"	400 00		
	Forward,				8,087 13		

Account Continued.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Remarks.
SW ¼ and NE ¼	13	1 S	14 W	320 00	
SW ¼	25	2 S	1 W	160 00	
NW ¼	27	2 S	1 W	160 00	
SW ¼ and N ½	27	1 S	5 W	480 00	
NE ¼	29	1 S	6 W	160 00	
S ½	1	3 S	4 W	320 00	
NE ¼	21	2 S	1 W	160 00	
S ½ of NE ¼; S ½ of NW ¼	3	3 S	4 W	160 00	
E ½ of SE ¼	7	1 S	12 W	80 00	
E ½ of lot 2 of NW ¼; W ½ of lot 2 of NW ¼	3	1 S	6 W	85 95	
N ½ of lot 2 of NW ¼	31	1 S	6 W	32 12	
E ½ of NW ¼ and lots 1 and 2	19	1 S	11 W	168 19	S. P.
Lots 3, 4, 5, 6 and 7; NW ¼ of SE ¼	21	"	"	193 95	
Lot 1	27	"	"	31 11	
SW ¼	15	2 S	13 W	160 00	
N ½ of NE ¼	17	"	"	80 00	
SE ¼ and E ½ of SW ¼	19	"	"	240 00	
SW ¼	27	"	"	160 00	
SE ¼	3	3 S	4 W	160 00	
N ½	29	"	"	320 00	
S ½ of NE ¼; lot 2 of NW ¼	31	2 S	13 W	121 85	
Lot 1	7	1 S	13 W	12 68	
NE ¼	31	1 S	6 W	160 00	
SE ¼	31	1 S	6 W	160 00	
SE ¼	1	2 S	14 W	160 00	
N ½ of NE ¼	11	"	"	80 00	
N ½ of SE ¼	31	2 S	13 W	80 00	
NE ¼	13	2 S	14 W	160 00	
NW ¼ and E ½ of SE ¼; N ½ of SW ¼	23	2 S	14 W	320 00	
E ½ of SW ¼	17	1 S	12 W	80 00	
Forward,				8,690 74	

Railroad List.

South of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 19.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.	Remarks.
	Brought forward,				8,687 13		
All		25	6 S	4 W	640 00		
All fractional		3	6 S	5 W	347 17		
All		9	6 S	5 W	640 00		
All fractional		11	"	"	11 06		
All fractional		13	"	"	71 40		
	Forward,				10,396 76		

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Remarks.
Brought forward,				8,690 74	
NW ¼	13	2 S	14 W	160 00	
NE ¼	25	"	"	160 00	
E ½ of NE ¼	15	3 S	1 W	80 00	
E ½ of NW ¼	27	2 S	13 W	80 00	
SW ¼	1	3 S	3 W	160 00	
Fracl. NE ¼	3	3 S	3 W	163 73	
Lot 1	17	1 S	11 W	19 16	
Fracl. NE ¼	5	3 S	3 W	163 22	
All fracl.	7	3 S	3 W	640 24	
Lot 2 of NE ¼	13	1 S	13 W	9 69	
Lots 2 and 3	7	1 S	13 W	34 70	
Lot 3 of SE ¼	13	1 S	13 W	9 59	
Lot 3	19	"	"	27 38	
Forward,				10,398 45	

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 19.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	Area. .100	Fees of Register and Receiver.	Remarks.
	Brought forward,				10,396	76		
All fractional		3	7 N	17 W	398	52		
All		1	8 N	16 W	640	00		
All		3	"	"	640	00		
All		5	"	"	640	00		
All fractional		7	"	"	642	08		
All		9	"	"	640	00		

Continued.

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Remarks.
Brought forward,				10,398	45	
S ½ of NE ¼ and SE ¼	27	5 N	14 W	240	00	
S ½ of SE ¼; SE ¼ of SW ¼; S ½ of lot 2 of SW ¼	31	5 N	9 W	159	71	
SE ¼	7	3 N	6 W	160	00	
N ½ of NE ¼ and NW ¼	15	4 N	13 W	240	00	
E ½ of SE ¼; E ½ of SW ¼; SW ¼ of SW ¼; NW ¼ of SE ¼	11	4 N	13 W	240	00	
SE ¼	15	4 N	10 W	160	00	
SE ¼	1	"	"	160	00	
S ½	9	4 N	9 W	320	00	
S ½ of SW ¼	1	4 N	10 W	80	00	
W ½ of NW ¼	21	3 N	6 W	80	00	
SE ¼ of SE ¼	25	3 N	5 W	40	00	
N ½ of NE ¼; N ½ of NW ¼	33	3 N	4 W	160	00	
NW ¼ of NE ¼; S ½ of NE ¼; E ½ of NW ¼; S ½ of SW ¼	29	3 N	4 W	280	00	
SE ¼; NE ¼ of SW ¼	29	3 N	4 W	200	00	
S ½ of SE ¼; SE ¼ of SW ¼	21	"	"	120	00	
N ½ of NW ¼ and lot 2	23	1 N	11 W	119	87	
Lot 1 of SW ¼	7	1 N	11 W	43	74	
NE ¼	17	3 N	6 W	160	00	
SW ¼	21	3 N	6 W	160	00	
W ½ of SW ¼	13	1 N	11 W	80	00	
SW ¼ of NW ¼	17	1 N	11 W	40	00	
NE ¼ and E ½ of NW ¼	3	1 N	6 W	240	00	
S ½ of lot 2 in SW ¼	7	7 N	14 W	40	80	
SW ¼ of NW ¼; NW ¼ of SW ¼	17	"	"	80	00	

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
All		11	8 N	16 W	640 00		
All		13	"	"	640 00		
All		15	"	"	640 00		
All		17	"	"	640 00		
All		21	"	"	640 00		
All		23	"	"	640 00		
All		25	"	"	640 00		
NW ¼		29	"	"	160 00		
All fractional		19	9 N	16 W	643 22		
All		21	"	"	640 00		
W ½ of NE ¼; NW ¼ of SE ¼; S ½ of SE ¼; W ½		25	"	"	520 00		
All		27	"	"	640 00		
All		29	"	"	640 00		
All		31	"	"	641 94		
All		33	"	"	640 00		
All		35	"	"	640 00		
	Total,				23,642 52	$296 00	

Account Continued.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Remarks.
S ½ of SE ¼; NW ¼ of SE ¼; SW ¼	29	7 N	14 W	280	00	
NE ¼ of NE ¼	31	"	"	40	00	
NW ¼; NW ¼ of SW ¼	33	"	"	200	00	
N ½ of SW ¼	21	3 N	4 W	80	00	
SW ¼ of NW ¼	35	3 N	5 W	40	00	

South of Base Line and West of San Bernardino Principal Meridian.

Fracl. N ½	1	3 S	4 W	332	00
Fracl. N ½ of NE ¼; fracl. N ½ of NW ¼	3	"	"	186	68
Lot 3 of NW ¼	1	2 S	14 W	38	94
N ½ of SE ¼	15	3 S	5 W	80	00
All	9	3 S	3 W	640	00
All	17	3 S	3 W	640	00
All	35	3 S	3 W	640	00
All	13	3 S	4 W	640	00
All	15	3 S	4 W	640	00
SW	25	3 S	3 W	160	00
All fractional	19	3 S	3 W	643	48
All	17	3 S	4 W	640	00
E ½ and SW ¼	11	3 S	3 W	480	00
SE ¼ of SW ¼	1	3 S	8 W	40	00
All	21	3 S	4 W	640	00
All	23	3 S	4 W	640	00
Fracl. NW ¼ and S ½	5	3 S	3 W	481	82
SE ¼	1	3 S	3 W	160	00
All	25	3 S	4 W	640	00
All	27	3 S	4 W	640	00
Total,				23,645	49

G. 96. (7-25-91-250.)

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from a point in the northeast one-quarter of section 17, township 11 north, range 12 west, San Bernardino base and meridian, to a point in the northwest one-quarter of section 3, township 2 north, range 15 west, San Bernardino base and meridian, and from a point in the northeast one-quarter of section 27, township 1 south, range 9 west, San Bernardino base and meridian, to a point in the southwest one-quarter of section 24, township 5 south, range 7 east, San Bernardino base and meridian, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, indemnity belt, on each side of the line of route for a distance of one hundred and seventy-eight and fifty-nine one-hundredths (178.59) miles, being for the second (2d), third (3d), and fourth (4th) sections of said road, starting from a point in the northeast one-quarter of section 17, township 11 north, range 12 west, San Bernardino

base and meridian, and ending at a point in the southwest one-quarter of section 24, township 5 south, range 7 east, San Bernardino base and meridian, and that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this sixteenth day of January, 1886. Witness my hand and notarial seal, at the said city and county.

HOLLAND SMITH,

Notary public in and for the city and county of San Francisco, State of California.

[Seal]

San Francisco, California, January 16, 1886.

In presenting with this list of selections, a list of tracts lying within twenty miles of the Southern Pacific Railroad of California, lost to the company, and in lieu of which the selections are made, the said company respectfully claims that it is not required by law to specify lost lands when selecting indemnity; because the grant to said company by Congress is of a quantity of 12,800 acres of land per mile of road, and the fact is notorious that the company has not received patents for one-half as much land as is due it under the orders of the president of the United States, accepting its railroad according to law.

The company also pays the expense of surveying these lands under protest, because it claims to be exempted

from such payment by provisions of the said grant of lands to it by Congress.

JEROME MADDEN,
Land Agent, Southern Pacific Railroad Company.

United States Land Office.

Los Angeles, Cal., February 1, 1886.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, indemnity belt, on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify thatthe foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and

that the said company have paid to the undersigned, the receiver, the full sum of two hundred and ninety-six dollars ($296.00) in full payment and discharge of said fees.

J. D. BETHUNE,

Register.

J. W. HAVERSTICK,

Receiver.

(8-23-93-250) G. 163.

United States Surveyor General's Office,

San Francisco, California, January 19, 1886.

I, W. H. Brown, surveyor general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 208, dated January 19, 1886, to the credit of the United States, showing that the sum of $798.-04 has been deposited as cost of survey and $266.01 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey $798.04
Office work $266.01

$1,064.05

In testimony whereof, I have hereunto set my hand and official seal.

W. H. BROWN,
Surveyor General.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 231. Stephen Potter, Special Examiner," and find it to be a full, true and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 233.

United States Land Office.

Los Angeles, California, Filed Feby. 14, 1887.

J. D. Bethune, Register.

List No. 20.

Lands Selected

by the

Southern Pacific Railroad Company,

Indemnity Limits.

Branch Line.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company,

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said

company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the seventh (7th) day of January, A. D. 1887.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.
[Seal]

List of Lands
in the
Los Angeles Land District, California,
Selected by the
Southern Pacific Railroad Company
of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, approved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pa-

cific Coast," and the further act, approved July 25, 1868, entitled, "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the fourth (4th) section (seventy-eight and fifty-nine one-hundredths (78.59-100) miles) of the same, commencing at a point in northwest one-quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at a point in northeast one-quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian, which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad Company.

Railroad List.

North of Base line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 20.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.	Remarks.
	Lots 1, 2, 5; SW ¼ of NE ¼	3	3 N	20 W	153	43		
	SE ¼ of NE ¼; N ½ of SE ¼; NE ¼ of SW ¼	11	"	"	160	00		
					313	43	$4 00	

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	Area. .100	Remarks.
	Lots 1, 2, 3, 4, 5; SW ¼ of SE ¼; S ½ of SW ¼	31	1 N	11 W	222	59	
	Lots 6, 7, 8	3	1 N	12 W	73	76	
	Lots 4 and 5	35	"	"	19	81	
					316	16	

G. 96. (7-25-91-250.)

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: That I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from San Fernando to Mojave, for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, indemnity belt, on each side of the line of route for a continuous distance of seventy-eight and fifty-nine one-hundredths (78.59-100) miles, being for the fourth (4th) section of said road, starting from a point in northwest one-quarter, section 3, township 2 north, range 15 west, San Bernardino base and meridian, and ending at a point in northeast one-quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian, and that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this eleventh day of January, 1887. Witness my hand and official seal.

HOLLAND SMITH,

Notary Public in and for the City and County of San Francisco, State of California.

[Seal]

San Francisco, California, January 11, 1887.

In presenting with this list of selections, a list of tracts lying within twenty miles of the Southern Pacific Railroad of California, lost to the company, and in lieu of which the selections are made, the said company respectfully claims that it is not required by law, to specify lost lands when selecting indemnity; because the grant to said company by Congress is of a quantity of twelve thousand eight hundred acres of land per mile of road, and the fact is notorious that the company has not received patents for one-half as much land as is due it under the orders of the President of the United States, accepting its railroad according to law.

The company also pays the expenses of surveying these lands under protest, because it claims to be exempted from such payment by provisions of the said grant of lands to it by Congress.

JEROME MADDEN,

Land Agent, Southern Pacific Railroad Company.

United States Land Office.

Los Angeles, Cal., February 14, 1887.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the

Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, indemnity belt, on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands, nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioners of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of four ($4.00) dollars, in full payment and discharge of said fees.

J. D. BETHUNE,
Register.

J. W. HAVERSTICK,
Receiver.

(8-23-93-250.) G. 163.

United States Surveyor General's Office,
San Francisco, California, January 15, 1887.

I, R. P. Hammond, Jr., surveyor general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 140, dated January 12, 1887, to the credit of the United States, showing that the sum of $10.62 has been deposited as cost of survey, and $3.54 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	$10.62
Office work	$ 3.54
	$14.16

In testimony whereof, I have hereunto set my hand and official seal.

R. P. HAMMOND, Jr.,
Surveyor General.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 233. Stephen Potter, Special Examiner," and find it to be a full, true, and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 235.

United States Land Office.

Los Angeles, California, October 3, 1887.

J. D. Bethune, Register.

List No. 25.

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

Branch Line.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company.

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the twenty-eighth day of September, A. D. 1887.

JOSEPH L. WILLCUTT.

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company

of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company of California, under and by virtue of the twenty-third section of the act of Congress, approved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California, and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said

acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the first, second, third, and fourth sections (two hundred and twenty-eight and 59-100 (228 59-100) miles) of the same, commencing at Mojave and ending at Indian Wells (Indio) which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad Company.

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 25.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
Fracl. E ½ of NE ¼		1	2 N	2 W	80 07		
Lots 1, 2, 3, 6 and 7		19	2 N	20 W	112 72		
All fracl.		1	3 N	4 W	644 74		
All fracl.		3	3 N	4 W	641 88		
All fracl.		5	3 N	4 W	632 68		
Fracl. N ½		7	"	"	312 77		
N ½; N ½ of SE ¼		9	"	"	400 00		
All		11	"	"	640 00		
NW ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼		13	"	"	160 00		
All fracl.		1	3 N	5 W	635 68		
All fracl.		3	"	"	632 70		
All fracl.		5	"	"	631 92		
Fracl. N ½		7	"	"	316 57		
N ½		9	"	"	320 00		
N ½		11	"	"	320 00		

Continued.

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Remarks.
	S ½ of NE ¼	35	1 N	5 W	80	00	
	All that part of SW ¼ in Rancho Muscupiabe	13	1 N	4 W	46	46	
	SE ¼ of SW ¼	31	1 N	9 W	40	00	
	All that part of NE ¼ in Rancho Muscupiabe	35	1 N	5 W	26	67	113 13
	W ½; W ½ of NE ¼; SE ¼ of NE ¼; SE ¼	15	1 N	4 W	600	00	
	Lot 1	7	1 N	11 W	43	74	643 74
	All	17	1 N	4 W	640	00	
	All that part in Rancho Azusa	29	1 N	10 W	637	93	
	All that part in Rancho Cucamonga	35	1 N	7 W	314	12	
	N ½; N ½ of SE ¼	19	1 N	4 W	400	00	
	All	21	1 N	4 W	640	00	
	SW ¼ of NE ¼; NE ¼ of SE ¼; W ½ of SE ¼	35	1 N	7 W	160	00	
	All that part in Rancho Azusa	27	1 N	10 W	638	73	
	All that part in Rancho Ex-Mission San Fernando	5	1 N	14 W	632	61	
	All that part in Rancho Providencia and tract called Cahuenga	15	1 N	14 W	637	08	
	All that part in Rancho Addition to San Jose	33	1 N	9 W	315	44	
	N ½	23	1 N	4 W	320	00	
	S ½	23	"	"	320	00	

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
All fracl.		1	3 N	6 W	638 40		
Fracl. N ½		3	"	"	316 83		
NE ¼		5	"	"	160 00		
NW ¼		7	"	"	160 00		
N ½ of NE ¼		11	"	"	80 00		
Fracl. N ½; NW ¼ of SE ¼; E ½ of SE ¼; N ½ of SW ¼		1	3 N	8 W	480 84		
All of fracl.		3	"	"	640 28		
All		11	"	"	640 00		
Lots 3, 4 and 5; SE ¼ of NW ¼; W ½ of SE ¼; SW ¼		5	3 N	19 W	396 43		
Lots 3, 6, 7, 8 and 9; S ½ of NW ¼; NW ¼ of SE ¼; N ½ of SW ¼; SE ¼ of SW ¼		3	3 N	20 W	372 66		
Lot 1		9	3 N	20 W	2 14		
	Forward,				10,369 31		

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
All'		25	1 N	4 W	640 00		
All that part in Rancho San Pascual		3	1 N	12 W	265 96		
Lot 13		31	1 N	9 W	38 57		
Lot 5		31	"	"	12 00	316 53	
NE ¼		27	1 N	4 W	160 00		
NW ¼		27	"	"	160 00		
N ½ of SE ¼		27	"	"	80 00		
S ½ of SE ¼; SW ¼		19	"	"	240 00		
S ½ of SE ¼; SW ¼		27	"	"	240 00	480 00	
All		29	"	"	640 00		
All		31	"	"	640 00		
All that part in Rancho Ex-Mission San Fernando		33	1 N	14 W	390 80		
Lot 6		31	1 N	9 W	6 60	397 40	
All that part in Rancho Muscupiabe		19	1 N	3 W	103 99		
SE ¼ of NE ¼ and E ½ of SE ¼		11	1 N	4 W	120 00		
All that part in Rancho Azusa		21	1 N	10 W	140 70		
All that part of SE ¼ of SE ¼ in Rancho Ex-Mission San Fernando		23	3 N	16 W	4 72		
All that part in Rancho San Francisco		9	"	"	2 46		S. P.*
	Forward,				10,368 58		

*S. P.

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 25.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	Brought forward,				10,369 31		
	Lot 2; NW ¼ of SW ¼; S ½ of SW ¼; S ½ of SE ¼	11	3 N	20 W	372 66		
	All	13	"	"	640 00		
	All	15	"	"	640 00		
	All fracl.	17	"	"	639 37		
	E ½	21	"	"	320 00		
	All	23	"	"	640 00		
	Lots 1, 2, 3 and 4	25	"	"	43 56		
	Lots 1, 2, 3 and 4; N ½ of NE ¼ and N ½ of NW ¼	27	"	"	217 80		
	SW ¼ of NE ¼ and NW ¼ of SE ¼	1	3 N	21 W	80 00		
	SE ¼ of NW ¼ and E ½ of SW ¼	1	"	"	120 00		
	SW ¼ of NW ¼	1	"	"	40 00		
	Lots 1 and 2	3	"	"	36 79		
	N ½ of NE ¼ and lots 1, 2, 3 and 4	11	"	"	179 66		
	All	13	"	"	640 00		
	Lot 1	15	"	"	14 32		

Continued.

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
	Brought forward,				10,368 58		
	All that part in Rancho Muscupiabe	27	1 N	5 W	109 70		
	All that part in Rancho Temescal	9	5 N	17 W	228 96		
	Lot 2	17	1 N	11 W	33 26	371 92	
	All	7	1 N	4 W	640 00		
	All	3	1 N	5 W	640 00		
	All	9	"	"	640 00		
	W ½	31	1 N	3 W	320 00		
	All	35	1 N	4 W	640 00		
	Lot 14	31	1 N	9 W	40 00		
	All that part in Rancho Santa Anita	17	1 N	11 W	165 62		
	Lot 1	17	1 N	11 W	12 35		
	SW ¼ of SW ¼	13	3 N	4 W	40 00	217 97	
	S ½ of NE ¼	3	1 N	12 W	80 00		
	NE ¼ of NE ¼ and S ½ of NE ¼	11	1 N	5 W	120 00		
	NW ¼ of NE ¼	11	1 N	5 W	40 00		
	All that part in Rancho Addition to San Jose	35	1 N	9 W	37 14		
	NW ¼	11	1 N	5 W	160 00		
	All that part of E ½ of NE ¼ in Rancho San Rafael	3	1 N	14 W	20 23	180 23	
	All	13	1 N	5 W	640 00		
	All that part in Rancho Cucamonga	23	1 N	8 W	14 55		

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
All		23	3 N	21 W	640 00		
All fracl.		25	"	"	596 40		
Lots 1, 2, 3 and 4; NW ¼ of NE ¼; E ½ of NW ¼		35	"	"	205 85		
S ½ of NE ¼; fracl. S ½ of NW ¼; S ½		7	4 N	1 W	480 06		
All		17	"	"	640 00		
All		21	"	"	640 00		
S ½ of SE ¼ and S ½ of SW ¼		1	4 N	2 W	160 00		
SW ¼		3	"	"	160 00		
All fracl.		5	"	"	639 84		
All fracl.		7	"	"	613 16		
All		9	"	"	640 00		
	Forward,				20,408 78		

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
All		15	1 N	5 W	640 00		
W ½; S ½ of NE ¼ and SE ¼		1	1 N	5 W	560 00		
NE ¼ of SW ¼		11	"	"	40 00	600 00	
NW ¼ of SW ¼; S ½ of SW ¼; E ½ of SE ¼		11	"	"	200 00		
NE ¼ and W ½		23	1 N	5 W	480 00		
All		25	"	"	640 00		
All		29	1 N	7 W	640 00		
SE ¼		23	1 N	5 W	160 00		
SE ¼		13	3 N	4 W	160 00		
All		31	1 N	7 W	640 00		
All that part in Rancho Muscupiabe		17	1 N	5 W	418 43		
W ½ of SE ¼		11	1 N	5 W	80 00		
N ½ of SE ¼		21	3 N	4 W	80 00		
Lot 1		35	1 N	5 W	38 28	616 71	
All that part in Rancho Muscupiabe		21	1 N	5 W	249 66		
All that part in Rancho Ex-Mission San Fernando		9	1 N	14 W	97 76		
All that part in Rancho Azusa		19	1 N	10 W	137 19		
All that part of SE ¼ in Rancho Temescal		13	5 N	18 W	53 23		
All that part in Rancho Temescal		5	5 N	17 W	104 94	642 78	
	Forward,				20,409 88		

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 25.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	Brought forward,				20,408 78		
All		**11**	**4 N**	**2 W**	**640 00**		*
All		**13**	"	"	**640 00**		
All		**15**	"	"	**640 00**		
All		**17**	"	"	**640 00**		
All fracl.		**19**	"	"	**618 92**		
All		**21**	"	"	**640 00**		
All		**23**	"	"	**640 00**		
All fracl.		**1**	**4 N**	**3 W**	**640 06**		
All fracl.		**3**	"	"	**637 80**		
All		**11**	"	"	**640 00**		
All		**13**	"	"	**640 00**		
All		**17**	"	"	**640 00**		
All fracl.		**19**	"	"	**619 09**		†

* S. P.
† 619 34 acres on map.

Continued.

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
	Brought forward,				20,409 88		
	All that part in Rancho Cucamonga	19	1 N	7 W	498 42		
	Lot 2	35	1 N	5 W	15 05		
	W ½ of SW ¼	13	1 N	11 W	80 00		
	All that part in Rancho Santa Anita	15	"	"	48 88	642 35	*
	All	31	1 N	10 W	640 00		
	All	33	"	"	640 00		
	All	35	"	"	640 00		
	All that part in Rancho Cucamonga	21	1 N	7 W	503 44		
	Lot 8	31	1 N	9 W	22 00		
	All that part of NW ¼ in Rancho Temescal	31	5 N	17 W	26 96		
	All that part in Rancho Temescal	7	5 N	17 W	64 60	617 00	
	All	19	1 N	11 W	640 00		
	All	21	"	"	640 00		
	All	25	"	"	640 00		
	All	27	"	"	640 00		
	All	33	"	"	640 00		
	All	35	"	"	640 00		
	All	9	1 N	12 W	640 00		
	All that part of Rancho Cucamonga	25	1 N	8 W	572 49		
	Lots 10 and 12	31	1 N	9 W	44 00	616 49	†

* S. P.
† S. P.

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Remarks.
All		21	"	"	640	00	
All fracl.		31	"	"	627	44	
All fracl.		1	4 N	5 W	639	63	
All		3	"	"	639	08	
All fracl.		5	"	"	635	20	
All fracl.		7	"	"	595	12	
All		9	"	"	640	00	
All		11	"	"	640	00	
All		13	"	"	640	00	
All		15	"	"	640	00	
All		17	"	"	640	00	
All fracl.		19	"	"	610	12	
	Forward,				36,271	24	

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Fees of Register and Receiver.	Remarks.
	All	15	1 N	12 W	640	00		
	All that part in Rancho Santa Anita and San Francisquito	31	1 N	11 W	417	41		
	All that part in Rancho San Fernando	23	3 N	15 W	112	52		
	E ½ of SW ¼	13	3 N	4 W	80	00		
	All that part of NW ¼ in Rancho Temescal	21	5 N	17 W	20	41	630	34
	All	17	1 N	12 W	640	00		
	All	19	"	"	640	00		
	All that part in Rancho San Pascual	11	"	"	508	25		
	All that part in Rancho San Fernando	21	3 N	15 W	41	24		
	S ½ of SE ¼	7	9 N	13 W	80	00	629	49
	All that part in Rancho Santa Anita and other private grants	35	1 N	12 W	558	60		
	NE ¼ of NE ¼	21	"	"	40	00	598	60 ‡
	All	23	"	"	640	00		
	All	25	"	"	640	00		
	All	27	"	"	640	00		
	All	29	"	"	640	00		
	All	31	"	"	640	00		
	All that part in Rancho San Fernando	1	2 N	15 W	409	91		
	NW ¼; NW ¼ of NE ¼	21	1 N	2 W	200	00	609	91 ϕ
	Forward				36,274	06		

‡ S. P.

ϕ Should be R. 12 W., S. B. M. July 6, '88, corrected.

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 25.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	Brought forward,				36,271 24		
All		21	4 N	5 W	640 00		
All		23	"	"	640 00		
All		25	"	"	640 00		
All		27	"	"	640 00		
All		29	"	"	640 00		
All fractional		31	"	"	620 90		
All		33	"	"	640 00		
All		35	"	"	640 00		
All fractional		1	4 N	6 W	645 62		
All fractional		3	"	"	650 99		
All fractional		5	"	"	641 08		
All fractional		7	"	"	601 60		
All		9	"	"	640 00		

Continued.

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Remarks.
	Brought forward,				36,274	06	
All		1	1 N	14 W	640	00	
All		7	"	"	640	00	
All		13	"	"	640	00	
All		17	"	"	640	00	
All		19	"	"	640	00	
All that part in Rancho Ex-Mission San Fernando		31	"	"	323	60	
All that part in Rancho La Canada		21	2 N	13 W	272	32	
All that part in Rancho San Francisco		1	3 N	17 W	23	30	619 22
All		21	1 N	14 W	640	00	
All		23	"	"	640	00	
All that part in Rancho Santa Anita		23	1 N	11 W	358	02	
All that part in Rancho Temescal		11	4 N	18 W	203	67	
S ½ of NE ¼ .		21	1 N	12 W	80	00	641 69
All that part in Rancho San Fernando		25	3 N	15 W	308	71	
All that part in Rancho San Francisco		11	4 N	17 W	345	09	653 80
All		33	1 N	12 W	640	00	
S ½		21	"	"	320	00	
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼		23	2 N	15 W	280	00	600 00
All		25	1 N	14 W	640	00	

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
All		11	"	"	640 00		
All		13	"	"	640 00		
All		15	"	"	640 00		
All		17	"	"	640 00		
All fractional		19	"	"	608 32		
All		21	"	"	640 00		
All		23	"	"	640 00		
All		25	"	"	640 00		
All		27	"	"	640 00		
All		29	"	"	640 00		
All fractional		31	"	"	624 58		
All		33	"	"	640 00		
All		35	"	"	640 00		
Lots 2, 3, 4, 5 and 6; W ½ of Lot 7; W ½ of Lot 8; Lots 9, 10 and 11; SW ¼ of SW ¼; E ½ of SW ¼; W ½ of SE ¼		5	4 N	19 W	579 49		
All fractional		7	"	"	635 41		
	Forward,				54,039 23		

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Remarks.
All		19	2 N	13 W	640	00	
All		29	"	"	640	00	
All		31	"	"	640	00	
All		33	"	"	640	00	
All that part in Ranchos Ex-Mission San Fernando and Providencia		27	1 N	14 W	561	51	
NW ¼ of NW ¼		23	2 N	15 W	40	00	601 51
All		7	2 N	14 W	640	00	
All		15	"	"	640	00	
All		17	"	"	640	00	
All		19	"	"	640	00	
All		31	"	"	640	00	
All		35	"	"	640	00	
All		3	2 N	15 W	640	00	
All		5	"	"	640	00	
All that part in Rancho San Francisco		11	4 N	16 W	538	95	
NE ¼ of SW ¼		23	2 N	15 W	40	00	578 95
All		7	2 N	15 W	640	00	
	Forward,				54,049	22	

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 25.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	Brought forward,				54,039 23		
	W ½	17	4 N	19 W	320 00		
	Lots 1 and 2	31	"	"	73 08		
	S ½ of NE ¼ and SE ¼ of NW ¼	31	"	"	120 00		
	NE ¼ of NW ¼ and Lots 3 and 4	31	"	"	108 98		
	Lot 9 and NE ¼ of SE ¼	31	"	"	77 51		
	SE ¼	11	4 N	20 W	160 00		
	Lots 1, 2 and 5	13	"	"	108 23		
	All fracl.	19	"	"	631 42		
	All fracl.	21	"	"	611 16		
	E ½	31	"	"	320 00		
	Lot 6; SW ¼ of SE ¼ and S ½ of SW ¼	35	"	"	154 86		
	S ½	13	4 N	21 W	320 00		
	E ½ of NE ¼ and E ½ of SE ¼	15	"	"	160 00		
	All	23	"	"	640 00		
	All	25	"	"	640 00		
	E ½	27	"	"	320 00		

Continued.

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Remarks.
	Brought forward				54,049 23	
	E ½	9	2 N	15 W	320 00	
	W ½ of SW ¼	23	"	"	80 00	
	SE ¼ of SW ¼ and W ½ of SE ¼	23	"	"	120 00	
	E ½ of SE ¼	23	"	"	80 00	
	All that part of NW ¼ in Rancho Temescal	29	5 N	17 W	25 90	105 90
	E ½ of NW ¼	9	2 N	15 W	80 00	
	SW ¼	9	"	"	160 00	
	All that part in Rancho Temescal	1	4 N	18 W	62 30	
	SW ¼ of NW ¼	9	2 N	15 W	40 00	102 30
	All that part in Rancho San Francisco	3	4 N	16 W	627 98	
	All that part in Rancho Temescal	9	4 N	18 W	620 38	
	E ½	13	2 N	15 W	320 00	
	S ½ of NE ¼ and S ½ of NW ¼	17	4 N	14 W	160 00	
	E ½	15	2 N	15 W	320 00	
	SW ¼	15	"	"	160 00	
	All	17	"	"	640 00	
	All	19	"	"	640 00	
	E ½	25	"	"	320 00	

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.	Remarks.
All		35	4 N	21 W	640 00		
Fracl. S ½		19	5 N	4 W	304 36		
S ½		21	"	"	320 00		
E ½		25	"	"	320 00		
All		27	"	"	640 00		
All		29	"	"	640 00		
All fracl.		31	"	"	614 68		
All		33	"	"	640 00		
All		35	"	"	640 00		
All		27	5 N	6 W	640 00		
All		33	"	"	640 00		
All		35	"	"	640 00		
SE ¼ and E ½ of SW ¼		29	5 N	8 W	240 00		
All		33	"	"	640 00		
All		35	"	"	640 00		
W ½		13	6 N	7 W	320 00		
All		33	"	"	640 00		
	Forward				67,963 51		

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
All		21	2 N	15 W	640 00		
All that part in Rancho Simi		23	3 N	17 W	165 60		
All that part in Rancho La Liebre		5	10 N	15 W	137 33	302 93	
W ½		25	2 N	15 W	320 00		
E ½		27	"	"	320 00		
All		29	"	"	640 00		
All		31	"	"	640 00		
All that part in Rancho Santa Anita		13	1 N	12 W	462 71		
NW ¼		27	2 N	15 W	160 00	622 71	
All		33	"	"	640 00		
All		35	"	"	640 00		
All		27	3 N	4 W	640 00		
All		27	3 N	15 W	640 00		
All		29	"	"	640 00		
NW ¼ of NW ¼		9	2 N	15 W	40 00		
N W ¼		15	"	"	160 00		
NE ¼ of SW ¼		27	"	"	40 00	240 00	
All		31	3 N	15 W	640 00		
All		33	"	"	640 00		
All that part in Rancho Temescal		17	4 N	18 W	193 20		
NW ¼ of SW ¼ and S ½ of SW ¼		27	2 N	15 W	120 00	313 20	
All		35	3 N	15 W	640 00		
	Forward				67,984 63		

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 25.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.	Remarks.
	Brought forward,				67,963 51		
All fracl.		1	6 N	20 W	638 92		
All		11	"	"	640 00		
All		21	"	"	640 00		
All		27	"	"	640 00		
All		3	7 N	16 W	640 00		
All fracl.		5	7 N	17 W	391 80		
All		9	"	"	640 00		
All		11	"	"	640 00		
All fracl.		5	7 N	18 W	370 40		
All fracl.		7	"	"	642 52		
All		9	"	"	640 00		
All		17	"	"	640 00		
All		21	"	"	640 00		
All		27	"	"	640 00		
All fracl.		1	7 N	19 W	370 36		
All fracl.		3	"	"	370 08		

Continued.

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
	Brought forward,				67,984 63		
	NW ¼ of SE ¼ and E ½ of SE ¼	11	3 N	16 W	120 00		
	All that part in Rancho San Rafael	11	1 N	14 W	505 76	625 70	
	All	3	3 N	16 W	640 00		
	All	25	"	"	640 00		
	All	33	"	"	640 00		
	All	35	"	"	640 00		
	All that part of Rancho Tujunga	21	2 N	14 W	378 32		
	All	5	3 N	17 W	640 00		
	All	7	"	"	640 00		
	N ½	11	3 N	16 W	320 00		
	NW ¼ of NE ¼	23	4 N	17 W	40 00	360 00	
	All	9	3 N	17 W	640 00		
	All	15	"	"	640 00		
	All	17	"	"	640 00		
	All	19	"	"	640 00		
	All	21	"	"	640 00		
	All that part of E ½ in Rancho La Liebre	7	10 N	15 W	253 00		
	SW ¼ of NE ¼; E ½ of NW ¼	23	4 N	17 W	120 00	373 00	
	All that part in Rancho Temescal	33	5 N	18 W	180 60		
	W ½ of NW ¼; W ½ of SW ¼; NE ¼ of SW ¼	23	4 N	17 W	200 00	380 60	

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100.	[Fees of Register and Receiver.	Remarks.
All		11	7 N	19 W	640 00		
All		13	"	"	640 00		
N ½ of SE ¼ and SE ¼ of SE ¼		7	8 N	18 W	120 00		
All fracl.		9	"	"	638 61		
Lot 1		11	"	"	19 76		
Lots 1, 2 and 3 and SW ¼ of SW ¼		13	"	"	98 64	118 40	
All		15	"	"	640 00		
N ½ of NE ¼; SW ¼ of NW ¼; SE ¼ of SE ¼; W ½ of SE ¼; SW ¼		17	"	"	400 00		
All fracl.		19	"	"	641 48		
All		21	"	"	640 00		
All		23	"	"	640 00		
All		25	"	"	640 00		
All		27	"	"	640 00		
All fracl.		33	"	"	638 92		
NE ¼ and S ½		23	8 N	19 W	480 00		
NE¼ and S ½		27	"	"	480 00		
All		35	8 N	19 W	640 00		
	Forward,				85,785 00		

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
	All	27	3 N	17 W	640 00		
	All	29	"	"	640 00		
	SE ¼ of SW ¼ and W ½ of SE ¼	23	4 N	17 W	120 00		
	All	31	3 N	17 W	640 00		
	E ½ of SE ¼	23	4 N	17 W	80 00		
	NW ¼ of NE ¼	17	6 N	13 W	40 00	120 00	
	All	33	3 N	17 W	640 00		
	S ½; S ½ of NE ¼	15	3 N	19 W	400 00		
	All	21	3 N	19 W	640 00		
	All	23	"	"	640 00		
	All	25	"	"	640 00		
	All	27	"	"	640 00		
	All	35	"	"	640 00		
	All	5	4 N	16 W	640 00		
	All that part in Rancho Ex. Mission San Fernando	27	3 N	16 W	402 44		
	S ½ of NE ¼	17	6 N	13 W	80 00	482 44	
	All that part in Rancho San Francisco	13	4 N	16 W	479 36		
	All	7	"	"	640 00		
	Forward,				85,784 11		

Railroad List.

South of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 25.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.	Remarks.
	Brought forward,				85,785 00		
SW ¼		3	5 S	5 W	160 00		
S ½		5	"	"	320 00		
All		9	"	"	640 00		
S ½		11	"	"	320 00		
W ½		17	5 S	7 W	320 00		
Lots 1, 2, 3 and 4; NE ¼ of NE ¼		19	"	"	156 84		
SW ¼		21	"	"	160 00		
N ½ and N ½ of SE ¼		33	"	"	400 00		
SW ¼ of NE ¼; W ½ of SE ¼ and SE ¼ of SW ¼		13	6 S	3 W	160 00		
All fractional		31	6 S	4 W	641 04		
All fractional		5	6 S	5 W	556 40		
All fractional		7	"	"	645 16		
NW ¼ and S ½		15	"	"	480 00		
All fractional		17	"	"	625 57		
Fracl. N ½; N ½ of SE ¼; fracl. N ½ of SW ¼		19	"	"	482 20		
All		21	"	"	640 00		
N ½; S ½ of SE ¼; SW ¼		23	"	"	560 00		

Continued.

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
	Brought forward,				85,784 11		
SE ¼		25	1 S	5 W	160 00		
N ½		3	1 S	10 W	320 00		
All		29	1 S	3 W	640 00		
S ½		27	1 S	3 W	320 00		
W ½		9	1 S	4 W	320 00		
All that part in Rancho San Bernardino		19	"	"	159 40		
NW ¼		3	"	"	160 00		
E ½		11	"	"	320 00		
N ½ of NE ¼		25	1 S	5 W	80 00	400 00	
SW ¼		11	1 S	4 W	160 00		
All		13	"	"	640 00		
NW ¼		11	"	"	160 00		
E ½ and E ½ of NW ¼		29	"	"	400 00	560 00	
All		15	"	"	640 00		
All that part in Rancho San Jose		35	1 S	9 W	464 00		
Lot 1		1	1 S	10 W	17 79	481 79	
All (except lot 1)		27	1 S	9 W	626 65		
NE ¼ and W ½		21	1 S	4 W	480 00		
All		17	"	"	640 00		
SE ¼		21	"	"	160 00		
W ½ of NW ¼		29	"	"	80 00		
SE ¼		23	"	"	320 00	560 00	

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.	Remarks.
All		25	6 S	5 W	640 00		
All		27	"	"	640 00		
Lot 1; SE ¼ of NE ¼; W ½ of NE ¼; N ½ of SE ¼		29	"	"	236 40		
N ½ of NE ¼		33	"	"	80 00		
N ½; E ½ of SE ¼; NW ¼ of SE ¼; N ½ of SW ¼		35	"	"	520 00		
All fractional		3	7 S	1 W	485 12		
All fractional		5	"	"	486 94		
All fractional		15	"	"	545 52		
Lots 1, 2, 3, 4 and 5 and NW ¼		17	"	"	246 04		
Lots 1, 2, 3 and 4 and E ½ of SE ¼		21	"	"	198 88		
All		23	"	"	640 00		
	Forward.				97,771 11		

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
All		25	1 S	4 W	640 00		
All		27	"	"	640 00		
All that part in Rancho San Bernardino		33	"	"	107 90		
All that part of SW ¼ in Rancho Jarupa		25	1 S	5 W	128 59	236 49	
E ½ of NW ¼		23	1 S	4 W	80 00		
N ½; SE ¼; SE ¼ of SW ¼		35	1 S	10 W	520 00		
All that part in Rancho San Jose		1	1 S	9 W	445 72		
NE ¼ of SW ¼		35	1 S	10 W	40 00	485 72	
All that part in Rancho San Jose		9	1 S	8 W	315 47		
All that part in Rancho San Bernardino		7	1 S	4 W	70 96		
W ½ of NW ¼		23	"	"	80 00		
All that part in Rancho Santa Ana del Chino		25	1 S	8 W	21 66	488 09	
SW ¼		23	1 S	4 W	160 00		
E ½		3	1 S	9 W	320 00		
Lot 1 in NE ¼ (frl. NE ¼ of NE ¼)		17	1 S	10 W	24 93		
NW ¼ of SW ¼		35	1 S	10 W	40 00	544 93	
NW ¼; E ½ of SW ¼		3	1 S	9 W	240 00		
W ½ of SW ¼		3	1 S	9 W	80 00		
E ½ of NE ¼ and SW ¼ of NE ¼		9	1 S	9 W	120 00	200	
All		35	1 S	5 W	640 00		
	Forward,				97,767 18		

Railroad List.

South of **Base Line** and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 25.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	Brought forward,				97,771 11		
All		25	7 S	1 W	640 00		
All		27	"	"	640 00		
All fractional		33	"	"	639 17		
All		35	"	"	640 00		
All fractional		3	7 S	3 W	548 80		
Lots 1, 2 and 3		5	"	"	78 98		
Lot 1		7	"	"	30 80		
Lot 2		7	7 S	8 W	25 40		
All fractional		1	8 S	1 W	620 80		

South of Base Line and East of San Bernardino Principal Meridian.

Fracl. S ½		19	6 S	1 E	321 88	
W ½		27	"	"	320 00	
All		29	"	"	640 00	
All fractional		5	7 S	1 E	654 60	

Continued.

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
	Brought forward,				97,767 18		
All		3	1 S	7 W	640 00		
All		5	"	"	640 00		
All		9	"	"	640 00		
All		31	"	"	640 90		
NW ¼ of NE ¼; NW ¼; S ½		9	1 S	9 W	520 00		
Lot 4		19	1 S	13 W	27 61	547 61	
E ½ of NE ¼		17	1 S	8 W	80 00		
Lot 1		31	1 S	13 W	28 80		
Lot 2		31	"	"	28 97		
W ½ of NE ¼; SE ¼; W ½		17	1 S	8 W	560 00		
All that part of E ½ of NE ¼ in Rancho La Brea		9	1 S	14 W	20 00		
SW ¼ of SW ¼		35	1 S	10 W	40 00	620 00	
E ½		31	1 S	9 W	320 00		
W ½		31	"	"	320 00		
All		19	1 S	10 W	640 00		
All that part in Ranchos San Jose and addition to Santa Ana del Chino		33	1 S	8 W	581 14		
W ½ of NE ¼		21	1 S	10 W	80 00	661 14	

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
E ½ of NE ¼; E ½ of SE ¼ and W ½		13	7 S	1 E	480 00		
All fractional		19	"	"	649 92		
All		21	"	"	640 00		
SE ¼		23	"	"	160 00		
All		27	"	"	640 00		
All fractional		31	"	"	653 40		
All		33	"	"	640 00		
SW ¼		35	"	"	160 00		
Fracl S ½		7	7 S	3 E	324 00		
All		17	"	"	640 00		
E ½		23	"	"	320 00		
All fractional		1	8 S	1 E	655 32		
Fracl. E ½		3	"	"	324 94		
	Forward,				109,859 20		

Account Continued.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Remarks.
S ½	21	1 S	10 W	380 00	
NE ¼	29	"	"	160 00	480 00
All that part in Rancho La Puente and Los Nogales	35	1 S	9 W	445 69	
Fracl. NW ¼	7	1 S	12 W	162 12	
All that part in Rancho San Francisquito	7	1 S	11 W	42 24	650 05
S E ¼	29	1 S	10 W	160 00	
W ½	29	"	"	320 00	
N E ¼	29	1 S	11 W	160 00	640 00
NW ¼	29	"	"	160 00	
All	23	1 S	10 W	640 00	
All that part in Rancho Addition to Santa Ana del Chino	35	1 S	8 W	609 74	
NE ¼ of SE ¼	29	1 S	11 W	40 00	649 74
All	25	1 S	10 W	640 00	
NE ¼	35	1 S	11 W	160 00	
W ½	35	"	"	320 00	
All	3	"	"	640 00	
E ½	17	1 S	13 W	320 00	
All that part in City lands of Los Angeles	13	"	"	441 44	
All that part in Rancho La Brea	3	1 S	14 W	137 45	
W ½ of SE ¼	29	1 S	11 W	80 00	658 89
All that part in Rancho Santa Ana del Chino	29	1 S	7 W	127 30	
NW ¼	17	1 S	13 W	160 00	
SE ¼ of SE ¼	29	1 S	11 W	40 00	327 30
Forward,				109,859 68	

Railroad List.

South of Base line and East of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 25.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	Brought forward,				109,859 20		
E ½		9	8 S	1 E	320 00		

North of Base Line and West of San Bernardino Principal Meridian.

All	1	4 N	20 W	756 84		
SW ¼ and N ½	11	"	"	480 00		
Total,				111,416 04	$1,393 00	

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
Brought forward,				109,859 68		
S ½	23	2 S	2 W	320 00		
North of Base Line and West of San Bernardino Principal Meridian.						
All that part in Ranchos Temescal and San Francisco	21	4 N	18 W	636 77		
NE ¼ of NE ¼ and S ½ of NE ¼	19	5 N	17 W	120 00	756 77	
NW ¼ and S ½	19	5 N	17 W	480 00		
Total,				111,416 45		

G. 96. (7-25-91-250.)

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say, that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to Indian Wells (Indio), for which a grant of lands was made by the acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, indemnity belt, on each side of the line of route for a continuous distance of two hundred and twenty-eight 59-100 (228.59) miles, being for the first, second, third, and fourth sections of said road, starting froma point in northeast one-quarter, section 17, township 11 north, range 12 west, San Bernardino base and meridian, ending at a point in southwest one-quarter, section 24, township 5 south, range 7 east, San Bernardino base and meridian, and that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this twenty-eighth day of September, 1887. Witness my hand and official seal.

HOLLAND SMITH,

Notary public in and for the city and county of San Francisco, State of California.

[Seal]

United States Land Office.

Los Angeles, Cal., October 3, 1887.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, indemnity belt, on each side, and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands, nor is there any homestead, pre-emptions, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act

of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the commissioner of the general land office to to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of thirteen hundred and ninety-three ($1393) dollars, in full payment and discharge of said fees.

J. D. BETHUNE,
Register.

J. H. POLK,
Receiver.

San Francisco, California, Sept. 28, 1887.

In presenting with this list of selection a list of tracts lying within 20 miles of the Southern Pacific Railroad of California, lost to the company and in lieu of which the selections are made, the said company respectfully claims that it is not required by law to specify lost land when selecting indemnity, because the grant to said company by Congress is of a quantity of 12,800 acres of land per mile of road, and the fact is notorious that the company has not received patents for one-half as much land as is due it under the order of the President of the United States, accepting its railroad according to law.

The company also pays the expenses of surveying these lands under protest, because it claims to be exempted from such payment by provisions of the said grant of lands to it by Congress.

JEROME MADDEN,
Land agent So. Pac. R. R. Co.

(8-23-93-250.) G. 163.

United States Surveyor-General's Office.

San Francisco, California, September 29, 1887.

I, R. P. Hammond, Jr., Surveyor-General for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 103, dated September 29, 1887, to the credit of the United States, showing that the sum of $3760.29 has been deposited as cost of survey, and $1253.43 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey, ...$3760.29
Office work, ...$1253.43

$5013.72

In testimony whereof, I have hereunto set my hand and official seal.

R. P. HAMMOND, JR.,
Surveyor-General.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "United States vs. Southern Pacific, 600, Defendants' Exhibit No. 235. Stephen Potter, special ex-

aminer," and find it to be a full, true and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 237.

United States Land Office.

Los Angeles, California, ———, 1887.

List No. 26.

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

Branch Line.

United States Land Office.

Los Angeles, Cal., Oct. 3, 1887.

Offered and fees tendered and rejected because there is no plat of survey of a portion of said tracts and contest pending as to the other tracts.

J. D. BETHUNE,
Register.

J. H. POLK,
Receiver.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company,

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the twenty-eighth day of September, A. D. 1887.

JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District,

California,

Selected by the

Southern Pacific Railroad Company,

of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California,

under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled, "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company being in p for the second, third and fourth sections (one hu ared and seventy-eight and fifty-nine one-hundredths (178.59) miles) of the same, commencing at Mojave, and ending at Indian Wells (Indio), which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 26.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	SE ¼ and E½ of SW ¼	1	2 N	1 W	240 00		Unsurveyed
	SE ¼	15	"	"	160 00		"
	SW ¼ and E½	7	3 N	19 W	480 00		"
	All	17	"	"	640 00		"
	S ½ of SE ¼ and S ½ of SW ¼	7	3 N	20 W	160 00		"
	W ½	21	"	"	320 00		"
	NE ¼ of NW ¼	1	3 N	21 W	40 00		"
	NW ¼ of NW ¼	1	"	"	40 00		"
	All fracl.	5	4 N	3 W	637 64		M. W. Childs, Desert Land Appln.
	All fracl.	7	"	"	615 24		Walter T. Knox " " "
	All	9	"	"	640 00		Lulu M. Childs " " "
	All	15	"	"	640 00		James M. Hait " " "
	Lot 6	13	4 N	20 W	3 40		Orsen J. Goodenough, Pre-emption
	S ½	13	4 N	21 W	320 00		Unsurveyed
	NE ¼ and W ½	15	4 N	20 W	480 00		"
	W ½ of SW ¼	5	7 N	15 W	80 00		"
	E ½ of SW ¼ and SE ¼	25	8 N	17 W	240 00		"
	All fracl.	9	9 N	17 W	535 00		"
	Fracn. in NW ¼	11	"	"	70 00		"
	All	7	3 N	3 W	640 00		"
	N ½	19	"	"	320 00		"

Continued.

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
	SW and S ½ of SE ¼	9	1 N	4 W	240 00		
	SE ¼	35	1 N	5 W	160 00		
	All that part in Rancho La Canada	27	2 N	13 W	483 68		
	All	33	1 N	4 W	640 00		
	NE ¼	35	3 N	6 W	160 00		
	E ½	31	1 N	3 W	320 00		
	SE ¼ of SE ¼	15	3 N	4 W	40 00		
	NE ¼ of NE ¼	29	3 N	4 W	40 00		
	All	29	1 N	11 W	640 00		
	All that part in Rancho Cucamonga	27	1 N	7 W	466 52		
	All that part in Rancho San Francisco	15	4 N	17 W	145 54	612 06	
	All	33	1 N	7 W	640 00		
	All	7	1 N	12 W	640 00		
	All that part in Rancho San Fernando	19	3 N	15 W	326 18		
	W ½	13	2 N	15 W	320 00		
	S ½ of SE ¼ and S ½ of SW ¼	21	4 N	15 W	160 00	480 00	
	E ½ of NE ¼	23	4 N	17 W	80 00		
	SE ¼ and E ½ of NE ¼	19	10 N	15 W	240 00		
	All that part in Rancho La Canada	35	2 N	13 W	458 49		
	E ½ of SW ¼	31	10 N	15 W	80 00	538 49	
	E ½ of NW ¼	31	10 N	15 W	80 00		
	All	9	4 N	16 W	640 00		
	All that part in Rancho Temescal	27	5 N	18 W	310 57		

Continued.

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	All fracl.	29	3 N	20 W	377 80		Unsurveyed

South of Base Line and West of San Bernardino Principal Meridian.

	SW ¼	7	5 S	4 W	160 00	Unsurveyed
	S ½ of S W ¼	1	5 S	5 W	80 00	"
	SE ¼ and N ½	3	"	"	480 00	"
	N ½	5	"	"	320 00	"
	N ½	11	"	"	320 00	"
	SE ¼ and W ½	19	"	"	480 00	"
	SE ¼ and W ½	29	"	"	480 00	"
	All	31	"	"	640 00	"
	E ½	17	5 S	7 W	320 00	"
	NE ¼	15	6 S	5 W	160 00	Loren S. Mason, T. C. Appln.
	N ½ of SE ¼	23	"	"	80 00	Catherine L. Foote, " "
	All	1	7 S	4 W	640 00	Unsurveyed
	Forward,				11,839 08	

Account Continued.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
	All that part in Rancho San Francisco	13	3 N	16 W	179 42		
	NE ¼ of NE ¼	17	6 N	13 W	40 00		
	W ½ of SE ¼ and E ½ of SW ¼	17	6 N	13 W	160 00	379 42	

South of Base Line and West of San Bernardino Principal Meridian.

NW ¼	29	1 S	2 W	160 00	
N ½ of SE ¼	15	1 S	3 W	80 00	
NE ¼ and S ½	31	1 S	4 W	480 00	
N ½	27	1 S	3 W	320 00	
N ½	1	1 S	4 W	320 00	
S ½	1	1 S	4 W	320 00	
NW ¼	31	1 S	4 W	160 00	480 00
NE ¼ and S ½	3	1 S	4 W	480 00	
All	5	1 S	4 W	640 00	
E ½	9	1 S	4 W	320 00	
SW ¼	29	1 S	4 W	160 00	
W ½ of NE ¼	1	1 S	10 W	80 00	
All	7	1 S	8 W	640 00	
	Forward,			11,850 40	

Railroad List.

North of Base Line and East of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 26.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
	Brought forward,				11,839 08		
	All	1	2 N	1 E	640 00		Unsurveyed
	All	3	"	"	640 00		"
	All	5	"	"	640 00		"
	NW ¼ and E ½	7	"	"	480 00		"
	All	9	"	"	640 00		"
	N ½	11	"	"	320 00		"
	SE ¼ and W ½	27	"	"	480 00		"
	All	29	"	"	640 00		"
	N ½	33	"	"	320 00		"
	N ½	35	"	"	320 00		"
	All	1	2 N	2 E	640 00		"
	S ½	11	"	"	320 00		"
	All	13	"	"	640 00		"
	All	23	"	"	640 00		"
	All	25	"	"	640 00		"
	N ½	35	"	"	320 00		"

South of Base Line and East of San Bernardino Principal Meridian.

S ½ of SE ¼	35	6 S	2 E	80 00		Unsurveyed
W ½ of NE ¼ and W ½ of SE ½	13	7 S	1 E	160 00		Quitman Reed, Hd. Appln.
NW ¼	35	"	"	160 00		Unsurveyed
W ½	3	8 S	1 E	320 00		"
All	5	8 S	2 E	640 00		"
W ½ of NW ¼	7	"	"	80 00		"
	Total,			21,599 08	$270 00	

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100		Remarks.
	Brought forward,				11,850 40		
	All	19	1 S	8 W	640 00		
	All	29	1 S	8 W	640 00		
	All	31	1 S	8 W	640 00		
	NE ¼ and W ½	11	1 S	9 W	480 00		
	All	5	1 S	9 W	640 00		
	E ½	19	1 S	9 W	320 00		
	NE ¼ and W ½	25	1 S	9 W	480 00		
	All	13	1 S	9 W	640 00		
	W ½	19	1 S	9 W	320 00		
	E ½	15	1 S	9 W	320 00		
	All	17	1 S	9 W	640 00		
	W ½	15	1 S	9 W	320 00		
	All	21	1 S	9 W	640 00		
	All	23	1 S	9 W	640 00		
	All	29	1 S	9 W	640 00		
	SE ¼	11	1 S	9 W	160 00		
	SE ¼	25	1 S	9 W	160 00	320 00	
	E ½ of NE ¼	21	1 S	10 W	80 00		
	NW ¼	21	1 S	10 W	160 00		
	SW ¼	29	1 S	11 W	160 00		
	SE ¼	35	1 S	11 W	160 00		
	SW ¼	17	1 S	13 W	160 00	320 00	
	All	5	1 S	11 W	640 00		
	S ½ of NE ¼	1	1 S	12 W	80 00		
	Total,				21,610 40		

G. 96. (7-25-91-250.)

City and County of San Francisco, } ss.
State of California, }

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to San Fernando and from Spadra to Indian Wells (Indio), for which a grant of lands was made by the acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, indemnity belt, on each side of the line of route for a distance of one hundred and seventy-eight and fifty-nine one-hundredths (178.59) miles, being for the second, third and fourth sections of said road, starting from a point in northeast one-quarter, section 17, township 11 north, range 12 west, S. B. M. and ending at a point in southwest one-quarter, section 24, township 5 south, range 7 east, S. B. B. & M., and that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this twenty-eighth day of September, 1887. Witness my hand and seal of office.

HOLLAND SMITH.

Notary public in and for the city and county of San Francisco, State of California.

[Seal]

United States Land Office.

Los Angeles, Cal., ————, 189—.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868 and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, indemnity belt, on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an

assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions, dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of two hundred and seventy dollars ($270.00) in full payment and discharge of said fees.

————————, Register.

————————, Receiver.

San Francisco, California, Sept. 28, 1887.

In presenting with this list of selections a list of tracts lying within 20 miles of the Southern Pacific Railroad of California, lost to the company and in lieu of which the selections are made, the said company respectfully claims that it is not required by law to specify lost land when selecting indemnity, because the grant to said company by Congress is of a quantity of 12,800 acres of land per mile of road, and the fact is notorious that the company has not received patents for one-half as much land as is due it under the orders of the President of the United States, accepting its railroad according to law.

The company also pays the expense of surveying these lands under protest, because it claims to be exempted from such payment by provisions of the said grant of lands to it by Congress.

JEROME MADDEN,

Land agent Southern Pacific Railroad Company.

(8-23-93-250.) G. 163.

United States Surveyor-General's Office.

San Francisco, California, September 29, 1887.

I, R. P. Hammond, Jr., Surveyor-General for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 101, dated September 29, 1887, to the credit of the United States, showing that the sum of $728.97 has been deposited as cost of survey, and $242.99 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey, ...$728.97
Office work, ...$242.99

$971.96

In testimony whereof, I have hereunto set my hand and official seal.

R. P. HAMMOND, JR.,
Surveyor-General.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "United States vs. Southern Pacific, 600, Defendants' Exhibit No. 237. Stephen Potter, special ex-

aminer," and find it to be a full, true, and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 239.

United States Land Office.

Los Angeles, California.

Filed, Oct. 7, 1887.

J. D. Bethune, Reg.

List No. 28.

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

Branch Line.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company,

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day

of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the third day of October, A. D. 1887.

JOSEPH L. WILLCUTT.

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California,

Selected by the

Southern Pacific Railroad Company,

of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July

25, 1868, entitled, "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the second (2nd) section (fifty (50) miles) of the same, commencing at Spadra and ending at San Gorgonio, which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

JEROME MADDEN,

Land agent of the Southern Pacific Railroad Company.

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 28.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Fees of Register and Receiver.	Remarks.
All fracl.		19	4 N	1 W	629 60		
All		29	4 N	3 W	640 00		
	Total,				1,269 60	$16 00	

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres	.100	Remarks.
	All that part in Rancho San Francisco	1	3 N	16 W	586	23	
	NW ¼ of NE ¼	19	5 N	17 W	40	00	626 23
	All	33	4 N	18 W	640	00	
	Total,				1,266	23	

G. 96. (7-25-91-250.)

State of California,
City and County of San Francisco } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Spadra to San Gorgonio, for which a grant of lands was made by the acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870 as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, indemnity belt, on each side of the line of route for a continuous distance of fifty (50) miles, being for the second (2nd) section of said road, starting from a point in northeast one-quarter, section 27, township 1 south, range 9 west, S. B. B. & M., and ending at a point in southwest one-quarter, section 4, township 3 south, range 1 west, S. B. B. & M., and that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this third day of October, 1887. Witness my hand and official seal.

HOLLAND SMITH.

Notary public in and for the city and county of San Francisco, State of California.

[Seal]

United States Land Office.

Los Angeles, Cal., Oct. 7, 1887.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, indemnity belt, on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office, except those filed simultaneously with this list.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by an act of Congress, approved July 1, 1864, and contemplated by the circular of instructions, dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of sixteen ($16) dollars, in full payment and discharge of said fees.

J. D. BETHUNE,
Register.

J. H. POLK,
Receiver.

San Francisco, California, October 3, 1887.

In presenting with this list of selections a list of tracts lying within 20 miles of the Southern Pacific Railroad of California, lost to the company and in lieu of which the selections are made, the said company respectfully claims that it is not required by law to specify lost land when selecting indemnity, because the grant to said company by Congress is of a quantity of 12,800 acres of land per mile of road, and the fact is notorious that the company has not received patents for one-half as much land as is due it under the orders of the President of the United States, accepting its railroad according to law.

The company also pays the expenses of surveying these lands under protest, because it claims to be exempted from such payment by provisions of the said grant of lands to it by Congress.

JEROME MADDEN.
Land agent Southern Pacific Railroad Company.

(8-23-93-250.) G. 163.

United States Surveyor-General's Office.

San Francisco, California, October 4, 1887.

I, R. P. Hammond, Jr., Surveyor-General for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 107, dated October 4, 1887, to the credit of the United States, showing that the sum of $42.85 has been deposited as cost of survey, and $14.28 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey, ... $42.85
Office work, ... $14.28

$57.13

In testimony whereof, I have hereunto set my hand and official seal.

R. P. HAMMOND, Jr.,
Surveyor-General.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "United States vs. Southern Pacific, 600, Defendants' Exhibit No. 239, Stephen Potter, special ex-

aminer," and find it to be a full, true and corect copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 241.

United States Land Office.

Los Angeles, California.

Filed Oct. 7, 1887.

J. D. Bethune, Reg.

List No. 30,

Lands Selected

by the

Southern Pacific Railroad Company.

Indemnity Limits.

Branch Line.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company,

San Francisco, California.

I, Joseph L. Willcutt, secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed land agent of the said Southern Pacific Railroad Company by the board of directors of said company, at a meeting held on the tenth (10th) day

of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the fourth day of October, A. D. 1887.

JOSEPH L. WILLCUTT.

Secretary of the Southern Pacific Railroad Company.

[Seal]

List of Lands

in the

Los Angeles Land District, California

Selected by the

Southern Pacific Railroad Company

of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company, of California, under and by virtue of the twenty-third section of the act of Congress, appproved March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further act, approved July 25, 1868, entitled, "An act to extend the time for the con-

struction of the Southern Pacific Railroad in the State of California," and the joint resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the commissioner of the general land office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the second (2nd) section (fifty (50) miles) of the same, commencing at Spadra and ending at San Gorgonio, which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid acts and joint resolution of Congress. The selections being particularly described as follows.

_____,

Land agent of the Southern Pacific Railroad Company.

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List No. 30.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100.	Fees of Register and Receiver.	Remarks.
	SW ¼ of SW ¼	25	5 N	3 W	40 00		
	S ½ of SE ¼; S ½ of SW ¼	27	"	"	160 00		
	SW ¼ of NE ¼; S ½ of NW ¼; S ½	29	"	"	440 00		
	All fracl.	31	"	"	424 76		
	All	33	"	"	640 00		
	All	35	"	"	640 00		
	Total,				2,544 76	$32 00	

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the Line of said Railroad in lieu of which the selected tracts are taken.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area. Acres .100	Remarks.
	SW ¼ of SW ¼	25	4 N	18 W	40 00	
	SE ¼	25	"	"	160 00	
	SW ¼ of NE ¼; S ½ of NW ¼; S ½	35	"	"	440 00	
	All	17	5 N	17 W	640 00	
	All	25	5 N	18 W	640 00	
	All	35	"	"	640 00	
	Total,				2,560 00	

G. 96. (7-25-91-250.)

State of California,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company, from Spadra to San Gorgonio, for which a grant of lands was made by the acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, indemnity belt, on each side of the line of route for a continuous distance of fifty (50) miles, being for the second (2nd) section of said road, starting from a point in northeast one-quarter, section 27, township 1 south, range 9 west, S. B. B. & M., and ending at a point in southwest one-quarter, section 4 township 3 south, range 1 west, S. B. B. & M., and that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

JEROME MADDEN. [Seal]

Sworn to and subscribed before me this fifth day of October, 1887. Witness my hand and official seal.

HOLLAND SMITH.

Notary public in and for the city and county of San Francisco, State of California.

[Seal]

United States Land Office.

Los Angeles, Cal., Oct. 7, 1887.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, indemnity belt, on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office, except those filed simultaneously with this list.

We further certify that the foregoing list shows an

assessment of the fees payable to us allowed by the act of Congress, approved July 1, 1864, and contemplated by the circular of instructions, dated January 24, 1867, addressed by the commissioner of the general land office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of thirty-two ($32.00) dollars, in full payment and discharge of said fees.

J. D. BETHUNS,
Register.

I. H. POLK,
Receiver.

San Francisco, California, October 4, 1887.

In presenting with this list of selections, a list of tracts lying within 20 miles of the Southern Pacific Railroad of California, lost to the company, and in lieu of which the selections are made, the said company respectfully claims that it is not required by law to specify lost land when selecting indemnity, because the grant to said company by Congress, is of a quantity of 12,800 acres of land per mile of road; and the fact is notorious that the company has not received patents for one-half as much land as is due it under the orders of the President of the United States, accepting its railroad according to law.

The company also pays the expenses of surveying these lands, under protest, because it claims to be exempted from such payment by provisions of the said grant of lands to it by Congress.

JEROME MADDEN.
Land agent of the Southern Pacific Railroad Company.

(8-23-93-250.) G. 163.

United States Surveyor-General's Office.

San Francisco, California, October 4, 1887.

I, R. P. Hammond, Jr., surveyor-general for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No. 109, dated October 4, 1887, to the credit of the United States, showing that the sum of $85.88 has been deposited as cost of survey, and $28.63 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey, ... $85.88
Office work, ...$ 28.63

$114.51

In testimony whereof, I have hereunto set my hand and official seal.

R. P. HAMMOND, Jr.,
Surveyor-General.

[Seal]

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked, "United States vs. Southern Pacific, 600, Defendants' Exhibit No. 241. Stephen Potter, special ex-

aminer," and find it to be a full, true and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

United States vs. Southern Pacific Railroad Company, et al. No. 600. Exhibits, vol. 1.

[Endorsed]: Filed Sept. 18, 1896. Wm. M. Van Dyke, Clerk.

EXHIBIT "A."

(Deed.)

G. 325. (3-20-88-500.)

Deed No. ——.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation, duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send Greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one

thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G. Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the board of directors of said Southern Pacific Railroad Company may direct: All of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as

might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or encumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company;

And whereas, on the twenty-fourth day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the third day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the city of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the seventeenth day of April, 1883, the board of directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the eighteenth day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided, that, for the sake of convenience in making said conveyances, the said trustee, should have power to act, by

attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the twenty-first day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the city and county of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said railroad company has sold the lands hereinafter described, pursuant to the foregoing conditions, to ———— for the sum of ———— dollars, which sum has been by —h— fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid:

Now, therefore, in consideration of the premises, and the said sum of ———— dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said ———— and ——— heirs and assigns, the following described tract —— of land situate, lying and being in the county of ————, and State of ————, towit: ————

of section No. ————————, in township ———— of range ———— base and meridian, containing ———————— acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, excepting and reserving, however, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, or any branch railroad now or hereafter constructed on said lands, and the right to use all water needed for the operacting and repairing of said railroad; and subject also to the reservation and condition that the said purchaser ———— heirs and assigns, shall erect and maintain good and sufficient fences on both sides of said strip or strips of land and also reserving all claim of the United States to the same as mineral land.

To have and to hold, the aforesaid premises, to the said ———————— heirs and assigns, to ———— and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its president and secretary and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden,

have subscribed their names and affixed their seals, this ——— day of ———, A. D. 18—.

———,

President Southern Pacific Railroad Company.

[Seal] ———,

Secretary Southern Pacific Railroad Company.

———, [Seal]

———, [Seal]

Trustees.

By ———

Their Joint Attorney-in-fact.

State of California,
City and County of San Francisco. } ss.

On this ——— day of ———, in the year one thousand eight hundred and eighty———, before me, ———, a notary public in and for said city and county of San Francisco, State of California, personally appeared ———, known to me to be the president, and ———, known to me to be the secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the notary public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lans-

ing thereto as principals, and his own name as attorney-in-face.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, on the day and year above written.

_____

Notary public in and for the city and county of San Francisco, and State of California.

[Seal]

[Endorsed]: Deed No. ———. Southern Pacific Railroad Company. D. O. Mills and Gerrit L. Lansing, trustees. To ————————. Deed. Dated ————————, 18—.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Defendant's Exhibit No. 327.

FORM OF CONTRACT FOR DEED.

G. 30. (10-17-90-2,000.)

Southern Pacific Railroad Company.

Land Department.

No.———.

This agreement made at San Francisco, California, this ——— day of ———, A. D. 189—, betwen the Southern Pacific Railroad Company, party of the first part, and ————————of the county of ————, State of California, part— of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the part— of the second part hereinafter contained, agrees tosell to the part— of the second part, the following tract— of land, situated in the county of ————, State of California, and known and designated on the public surveys of the United States as ———————————— of section——, township——, range——, ———— base and meridian, containing ————————100 acres, for the sum of ————————100 dollars, gold coin of the United States.

And the part— of the second part, in consideration of the premises, agree— to buy the land hereinbefore described, and to pay to the party of the first part, the said sum of ————100 dollars, as follows, towit:———— ——100 dollars and also $ ———, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this

contract, (which last two mentioned sums have this day been fully paid), and the remainder, towit: the sum of ————————100 dollars, with interest thereon, annually in advance, at the rate of seven per cent, per annum, both in United States gold coin, of the present standard of value, at its office in the city and county of San Francisco, on of before the ——— day of ———— 189—; and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part therof; and if the part— of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the part— of the second part, —— legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor, from the United States, upon demand and the surrender of this instrument, execute and deliver to the part— of the second part, ——— heirs and assigns, a grant, bargain, and sale deed of said premises, reserving all claim of the United States, to the same as mineral land, and also reserving therein to the party of the first part, for railroad

purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads———— and with the condition that the part— of the second part, ——— heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed, that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed, that the part— of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the part— of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may without notice, enter upon, and take and hold possession of the said premises with all the improvements thereon.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbe-

fore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the part— of the second part, all moneys that may have been paid to it by ———— on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the part— of the second part, and will not be responsible to ——— for damages or cost in case of ——— failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the part— of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay, or impede the obtaining of patent for them by the party of the first part; and that ———— will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part and the written promise of the assignee— to perform all the undertakings and promises of the part— of the second part as above set forth.

It is further agreed, that the part— of the second part shall pay three dollars for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its secretary, and land agent, and the part— of the second part ha—— signed ———— name— hereto.

———————————

Land Agent S. P. R. R. Co.

———————————

Secretary S. P. R. R. Co.

———————————— [Seal]

———————————— [Seal]

Schedule of prices at which the lands described in this contract have been sold this ——— day of——— 189—.

Fraction	Sec.	Tp.	Range	B. & M.	No. of Acres.	Rate per Acre.	Amount.

———————, the part— of the second part in the within contract No. ———, for and in consideration of ——————————— dollars, to ———————— in hand paid, do——hereby sell, assign and transfer all—— right, title, interest and claim in and to the within described tract or parcel of land, and the within contract ———, unto ———————————, h—— heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under —— hand and seal—, this ——— day of ————, A. D. 18—.

——————————— (Seal)

——————————— (Seal)

State of California,
County of ———— } ss.

On this ————day of ————, in the year one thousand eight hundred and ————, before me ————, a ———— in and for said county, personally appeared ———— known to me to be the person whose name ———— subscribed to the above instrument, and acknowledged to me that ———— executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

————————————

Notary public.

On this ———— day of ————, 18——, in consideration of the above and foregoing assignment to me, ———— hereby agrees with the assignor therein named and with the Southern Pacific Railroad Company, to do and perform all the stipulations and conditions in the within contract, required to be done and performed by the part— thereto of the second part.

, ———————— [Seal]

, ———————— [Seal]

P. O. Address ————————

San Francisco, Cal.,———— 18

The Southern Pacific Railroad Company hereby consents to the above assignment to————————

————————————

By ———— Its land agent.

[Endorsed]: Unpatented lands. No. ——. Contract for a deed. Southern Pacific Railroad Company to ——————. Dated ————, 189 . Interest, $————, due on the ————day of ———— of each year. Remainder of principal $———, due on the——— day of ———, 189—.

U. S. v. S. P. 600. Defendants' Exhibit No. 327. Stephen Potter, special examiner.

Defendant's Exhibit No. 328.

FORM OF CONTRACT FOR DEED.

G. 326. (3-4-87-1,000.)

Southern Pacific Railroad Company.

Land Department.

No.———

Article of agreement, made at San Francisco, California, this ———— day of———— A. D. 18——, between the Southern Pacific Raliroad Company, party of the first part, and———— of ———— county, State of ————, part—— of the second part.

The said party of the first part, in consideration of the agreements of the said part—— of the second part herein contained, hereby agrees to sell unto the said part—— of the second part, the following tract— of land, situate in the county of ————, State of California, towit: and known and designated on the public surveys of the United States as ———————————— of section No. ———, in township ———, of range———

————base and meridian, containing ————— 100 acres, for the sum of ————————100 dollars, United States gold coin, of which sum the said part—— of the second part ha—— this day paid the sum of ——— ————100 dollars, with ————————100 dollars, one year's interest on the remainder of said purchase money; the remainder of said principal sum, amounting to ————————100 dollars, United States gold coin, with interest thereon, annually in advance, at the rate of seven per cent per annum, to be paid by the said part—— of the second part on or before the———— day of ———— 18——.

And the said party of the first part hereby further agrees that upon the punctual payment of said purchase money and interest, and the strict and faithful performance by the said part—— of the second part, ——— legal representatives or assigns, of all the agreements herein contained, then the said party of the first part will cause to be made and executed to the said part—— of the second part, ———heirs and assigns, upon request and surrender of this contract, a deed of grant, bargain and sale, for the conveyance of said premises, reserving, however, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and subject also to the reservation and condition, that the said purchaser—, ———— heirs and assigns, shall erect and maintain good and sufficient fences on

both sides of said strip or strips of land, and also reserving all claim of the United States to the same as mineral land.

And the said part—— of the second part hereby agree— to pay to the said Southern Pacific Railroad Company, its successors or assigns, the said sum of ——————————100 dollars, United States gold coin of the present standard of value, with interest thereon, annually in advance, at the rate of seven per cent per annum, at its office in the city of San Francisco, on or before the ———— day of ————, 18——, both principal and interest payable in United States gold coin of the present standard of value, and until the full payment of said purchase money and interest, will permit no strip or waste to be made on said premises, and no wood or growing trees to be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences, without the previous written consent of the said party of the first part. And if the said part—— of the second part shall fail to make punctually any of said payments of interest or principal, or shall fail to comply strictly with any of the stipulations of this contract, then the said party of the first part, its successors or assigns, shall have the right to enter upon and take possession of the said premises, with all the improvements thereon.

It is further mutually agreed and understood, that the said part—— of the second part shall have the immediate possession and enjoyment of said premises, and, if the same be in the adverse possession of a third party,

the right to use at his own cost and charge the name of the party of the first part to recover the same by action. And that in consideration of such possession and enjoyment he will pay all taxes and assessments that may be, at any time, imposed upon said premises. And it is further agreed that, should said part—— of the second part fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, the said party of the first part may pay the same, and add the amount thereof to the price to be paid for said premises, and such taxes or assessments with interest at the rate of seven per cent per annum shall be paid before said part—— of the second part shall be entitled to a conveyance of said premises.

The part—— of the second part hereby agrees to pay three dollars for expenses of the acknowledgments to the deed that shall be issued on this contract.

This contract shal not be assignable, except upon the consent of said party of the first part, and the written promise of the assignee— to perform all the undertakings and promises of the said part—— of the second part as above set forth.

In testimony whereof, the said party of the first part has caused these presents to be signed in duplicate by its secretary, and land agent, and the said part—— of the second part ha—— signed ——— name— hereto.

_____

Land agent.

_____

Secretary.

_____ [Seal]

_____ [Seal]

————————, the part—— of the second part in the within contract No. ——— for and in consideration of ———————— dollars, to———— in hand paid do—— hereby sell, assign, and transfer all ——— right, title, interest, and claim in and to the within described tract— or parcel— of land, and the within contract No. —— unto ————, h—— heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under ———hand— and seal—, this ——— day of ———— A. D. 18——.

———————————— [Seal]

———————————— [Seal]

State of California,
County of ———— } ss.

On this ——— day of———— in the year one thousand eight hundred and ——— before me———— ——, a ———in and for said county, personally appeared ————————, known to me to be the person— whose name——— subscribed to the above instrument, and acknowledged to me that ———————— executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

————————————

Notary public.

On this ——— day of ————, 18——, in consideration of the above and foregoing assignment to me, —

hereby agree with the assignor therein named and with the Southern Pacific Railroad Company, to do and perform all the stipulations and conditions in the within contract, required to be done and performed by the part—— thereto of the second part.

———————— [Seal]

———————— [Seal]

P. O. Address, ————————

San Francisco, Cal. ———— 18——.

The Southern Pacific Railroad Company hereby consents to the above agreement to ————————

————————

By ————————

Its Land Agent.

[Endorsed]: No.——. Contract for a deed. Southern Pacific Railroad Company to ————. Dated ———— 18——. Interest, $———— due on the ———— day of ———— of each year. Remainder of principal, $————, due on the ———— day of ———— 189—.

U. S. vs. S. P. 600. Defendants' Exhibit No. 328. Stephen Potter, special examiner.

Defendant's Exhibit No. 329.

PATENT NO. 26.

SOUTHERN PACIFIC

RAILROAD LANDS

(Main Line)

Primary Limits

INDEPENDENCE, SAN FRANCISCO,

VISALIA AND LOS ANGELES

LAND DISTRICT

CALIFORNIA.

6809 b-1 m.

(4-446)

The United States of America, To All To Whom These Presents Shall Come, Greeting:

Whereas, by the Act of Congress approved July 27, 1866, and Joint Resolution of June 28, 1870, " to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," and to secure to the government the use of the same for postal, military, and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line, under certain conditions and stipulations expressed in said Act, from the city of San Francisco to a point of connection with the Atlantic and Pacific Railroad, near the

boundary line of said State, and provision is made for granting to the said company, every alternate section of public land designated by odd numbers to the amount of twenty alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of twenty miles on each side of said road not sold, reserved, or otherwise disposed of by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed.

And whereas, official statements from the secretary of the interior have been filed in the general land office, showing that the commissioners appointed by the president, under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him that the line of said railroad and telegraph, from San Jose to Tres Pinos and from Alcalde to Mojave, together comprising two hundred and fifty-two miles and four hundred and seventy-nine thousandths of a mile has been constructed and fully completed and equipped in the manner prescribed by said Act of July 27, 1866, and accepted by the president.

And, whereas the following tracts have been duly listed under the act aforesaid, by the duly authorized land agent of the said Southern Pacific Railroad Company, as shown by his original lists of selections approved by the local officers and on file in this office.

And, whereas, the said tracts of land lie coterminous to the constructed line of said road and are particularly described as follows, towit:

North of base line and west of San Bernardino meridian, State of California.

Township 8, Range 14.

The north half of the northeast quarter, the southwest quarter of the northeast quarter, the northwest quarter of the southeast quarter, the northwest quarter of the southeast quarter, and the west half of section 1, containing four hundred and seventy-eight acres and forty-hundredths of an acre. All of section 3, containing six hundred and thirty-nine acres and forty-two hundredths of an acre. The north half of the northeast quarter and the north half of the northwest quarter of section 5 containing one hundred and sixty-one acres and forty-four hundredths of an acre. The southeast quarter, the north half of the southwest quarter and the north half of section 11, containing five hundred and sixty acres.

South of base line and east of Mount Diablo meridian, State of California.

Township 10, Range 4.

The lots numbered one and two and the northwest quarter of the northeast quarter of section 13, containing one hundred and twelve acres, and twenty hundredths of an acre.

Township 10, Range 4.

The north half of section 19, containing three hundred and twenty acres.

Township 12, Range 7.

The south half of section 3, containing three hunlred and twenty acres.

Township 17, Range 13.

The south half of the southeast quarter of section thirty-five, containing eighty acres.

Township 18, Range 13.

All of section 1, containing six hundred and forty-six acres and seventy-eight-hundredths of an acre. The southeast quarter, the northeast quarter of the southwest quarter, the south half of the southwest quarter and the southeast quarter of the northeast quarter of section 3, containing three hundred and twenty acres. The southeast quarter of the northwest quarter, the southwest quarter, and the east half of section 9, containing five hundred and twenty acres. All of section 11, containing six hundred and forty acres. All of section 13, containing six hundred and forty acres. All of section 15, containing six hundred and forty acres. The north half of the northeast quarter, the southeast quarter of the northeast quarter, and the northeas quarter of the southeast quarter of section 21, containing one hundred and sixty acres. All of section twenty-three, containing six hundred and forty acres. All of section 25, containing six hundred and forty acres. The east half of the southwest quarter and the east half of section 27, containing four hundred acres. All of section 35, containing six hundred and forty acres.

Township 19, Range 13.

All of section 1, containing five hundred and fifty-six acres and eighty-hundredths of an acre. The east half of

the southeast quarter and the northeast quarter of section 13, containing two hundred and forty acres.

Township 18, Range 14.

All of section 5, containing six hundred and forty-five acres and ninety-eight-hundredths of an acre. All of section 7, containing six hundred and forty acres and six-hundredths of an acre. All of section 9, containing six hundred and forty acres. All of section 15, containing six hundred and forty acres. All of section 17, containing six hundred and forty acres. All of section 19, containing six hundred and forty-one acres and thirty-eight-hundredths of an acre. All of section 21, containing six hundred and forty acres. All of section 27, containing six hundred and forty acres. All of section 29, containing six hundred and forty acres. All of section 31, containing six hundred and forty-one acres and thirty-four-hundredths of an acre. All of section 33, containing six hundred and forty acres.

Township 21, Range 14.

All of section 11, containing six hundred and forty acres, the southwest quarter, the northwest quarter and the east half of section 13, containing six hundred and forty acres. The east half of the northeast quarter of section 23, containing eighty acres. The east half of the northwest quarter, and the east half of section 25, containing four hundred acres.

Township 21, Range 15.

All of section 7, containing six hundred and sixty eight acres. All of section 9, containing six hundred and forty acres. All of section 15, containing six hundred and forty acres. All of section 17, containing six hundred and forty acres. All of section 19, containing seven hundred and eighty-nine acres and sixty-hundredths of an acre. All of section 21, containing six hundred and forty acres. All of section 23, containing six hundred and forty acres. All of section 25, containing six hundred and forty acres. All of section 27, containing six hundred and forty acres. All of section 29, containing six hundred and forty acres. The lots numbered one, two, five, seven, eight, nine, and ten and the east half of section 31, containing eight hundred and forty-seven acres and ninety-five-hundredths of an acre. All of section 33, containing six hundred and forty acres. All of section 35, containing six hundred and forty acres.

Township 22, Range 15.

All of section 1, containing five hundred and sixteen acres and fifty-hundredths of an acre. All of section 3, containing five hundred and eleven acres and forty hundredths of an acre. All of section 5, containing five hundred and twelve acres and eighty-hundredths of an acre. The northwest quarter of the northeast quarter, the east half of the northeast quarter and the northeast quarter of the southeast quarter of section 7, containing one hundred and sixty acres. All of section 9, containing six hundred and forty acres. All of section 11, con-

taining six hundred and forty acres. All of section 13, containing six hundred and forty-one acres and eighty-four-hundredths of an acre. All of section 15, containing six hundred and forty acres. The north half of the northwest quarter, the southeast quarter of the northwest quarter, the east half of the southwest quarter, and the east half of section 17, containing five hundred and twenty acres. All of section 21, containing six hundred and forty acres. All of section 23, containing six hundred and forty acres. All of section 25, containing six hundred and forty-one acres and twenty-eight-hundredths of an acre. All of section 27, containing six hundred and forty acres. The northeast quarter, the northeast quarter of the northwest quarter, the northwest quarter of the southeast quarter and the east half of the southeast quarter of section 33, containing three hundred and twenty acres. All of section 35, containing six hundred and forty acres.

Township 23, Range 15.

All of section 3, containing six hundred and forty-eight acres.

Township 17, Range 27.

The lot numbered four of section 7, containing thirty-eight acres and forty-five-hundredths of an acre. The north half of the northeast quarter and the north half of the northwest quarter of section 29, containing one hundred and sixty acres.

Township 25, Range 28.

The southwest quarter of section 1, containing one-hundred and sixty acres. All of section 25, containing six hundred and forty acres.

Township 28, Range 28.

All of section 17, containing six hundred and forty acres.

Township 28, Range 30.

The south half of section 1, containing three hundred and twenty acres. All of section 11, containing six hundred and forty acres. The northeast quarter and the west half of section 13, containing four hundred and eighty acres. All of section 15, containing six hundred and forty acres. The south half of section 21, containing three hundred and twenty acres. The northeast quarter and the west half of section 23, containing four hundred and eighty acres. The north half of section 27, containing three hundred and twenty acres.

Township 29, Range 31.

All of section 13, containing six hundred and forty acres.

Township 31, Range 32.

All of section 1, containing six hundred and thirty-nine acres and ninety-hundredths of an acre. All of section 3, containing six hundred and thirty-seven acres and thirty-two-hundredths of an acre. All of section 11, containing six hundred and forty acres.

Township 27, Range 33.

All of section 33, containing six hundred and forty acres.

Township 31, Range 33.

All of section 17, containing six hundred and forty acres. All of section 19, containing six hundred and forty-nine acres and two hundredths of an acre. All of section 21, containing six hundred and forty acres. All of section 33, containing six hundred and forty acres. All of section 35, containing six hundred and forty acres.

Township Twenty-eight, Range Thirty-four.

The southeast quarter of the northwest quarter, the west half of the northwest quarter, the northwest quarter of the southeast quarter and the south half of the southeast quarter of section twenty-nine, containing two hundred and forty acres.

Township Twenty-nine, Range Thirty-five.

The south half of the southeast quarter, the northwest quarter of the southeast quarter, the southwest quarter of the northeast quarter and the southeast quarter of the southwest quarter of section twenty-one, containing two hundred acres.

The said tracts as described in the foregoing make the aggregate area of forty-seven thousand, five hundred and five acres and eighty-six hundredths of an acre. (47,505.86.)

Now, know ye, that the United States of America, in consideration of the premises and pursuant to the said

acts of Congress, have given and granted, and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing. Yet excluding and excepting "all mineral lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute, shall not be construed to include "coal and iron lands."

To have and to hold the same with the appurtenances unto the said "Southern Pacific Railroad Company," and to its successors and assigns forever.

In testimony whereof, I, Grover Cleveland, President of the United States, have caused these letters to be made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington, this the twenty-second day of December, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States, the one hundred and nineteenth.

By the President: GROVER CLEVELAND.

M. McKean, Secretary.

[Seal of the United States Land Office.]

L. Q. C. Lamar,
Recorder of the General Land Office.

Recorded in volume 16, pages 35 to 42 inclusive.

[Endorsed]: Compared A. 18 13

Recorded at request of Wells, Fargo & Co. March 8, 1895, at fifteen minutes past 12 M., in Blok 6, page 170 of Patents, Los Angeles County Records, E. C. Hodgman, County Recorder. By A. Caldwell, Deputy. Fees, $——— 6.40-60 75.

Com 2269
135

Recorded at the request of Wells, Fargo & Co., February 15, A. D. 1895, at 45 minutes past 9 o'clock A. M., in volume P of Patents, page 170 et seq. Tulare County Records. Ira Chrisman, Recorder. By ———, Deputy Recorder, $5.50.

9.35

Filed for record at the request of Wells, Fargo & Co., February 14, A. D. 1895, at 15 minutes past 8 o'clock A. M., and recorded in volume P of Patents, pages 279 et seq. Fresno County Records. W. W. Machen, Recorder. By Jno. La Blanc, Deputy Recorder. 34. 3.70.

Indexed Compared

Filed for record at the request of Wells, Fargo & Co., February 11, A. D. 1895, at 20 minutes past 9 o'clock A. M., and recorded on February 11, 1895, in volume 1 of Patents, page 315 et seq. Merced County Records. T. H. Leggett, County Recorder. Fee $3.20.

State of California, }
County of Kern. } ss.

This certifies that the within instrument was received for record and duly recorded in Kern County Records at request of Wells, Fargo & Co., in Book 5 of Patents, page

464-70, this nineteenth day of January, 1895, at forty minutes past 10 o'clock A. M. F. S. Benson, County Recorder. ————, Deputy.

Fees, $5.20.

Recorded at request of Wells, Fargo & Co., in Book F of Patents, page 254 et seq., January 31, 1895, at eleven minutes past 9 o'clock A. M. Records of Santa Clara County, Cal. Chas. P. Owen, County Recorder. By J. D. Canelo, Deputy. 5.50.

[Endorsed on face]: Land department. Southern Pacific Railroad Company. Received January 3, 1895.

[Marked]: U. S. vs. S. P. 600, Defendants' Exhibit No. 329. Stephen Potter, Special Examiner.

I certify that I have compared the foregoing document with the original of which it purports to be a copy, marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 329. Stephen Potter, Special Examiner," and find it to be a full, true, and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 330.

PATENT NO. 27.

SOUTHERN PACIFIC.

RAILROAD LANDS

(Branch Line)

INDEMNITY LIMITS

LOS ANGELES LAND DISTRICT,

CALIFORNIA.

7044 b-500 (4-446)

The United States of America, to all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved July 27,1866, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and to secure to the government the use of the same for postal, military, and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of said State, to construct a railroad and telegraph line under certain conditions and stipulations expressed in said act,

from the city of San Francisco to a point of connection with the Atlantic & Pacific Railroad near the boundary line of said State, and provision is made for granting to the said company, "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office.

And whereas it is further provided by said act that "whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof under the direction of the secretary of the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not included in the reserved numbers."

And whereas, it is further enacted by the twenty-third section of the act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of

California) to construct a line of railroad from a point at or near Tehachapa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California," by the aforesaid act of July 27, 1866.

And whereas, official statements from the secretary of the interior have been filed in the general land office, showing that the commissioners appointed by the President under the provisions of the fourth section of the said act of July 27, 1866, have reported to him that the entire line of said branch railroad and telegraph from the town of Mojave in the State of California, by way of Los Angeles to the Colorado river at Yuma, has been constructed and fully completed and equipped in the manner prescribed by the said act of July 27, 1866, and accepted by the President,

And whereas, the following tracts have been selected under the acts aforesaid, by the duly authorized land agent of the said Southern Pacific Railroad Company, as shown by his original lists of selections approved by the local officers and on file in this office,

And whereas, the said tracts of land lie coterminous to the constructed line of road, and are particularly described as follows, towit:

North of base line and west of San Bernardino meridin, California.

Township Four, Range One.

The south half of the northeast quarter, the fractional south half of the northwest quarter, and the fractional south half of section seven, containing four hundred and eighty acres and six-hundredths of an acre. All of section seventeen, containing sx hundred and forty acres. All of fractional section nineteen, containing six hundred and twenty-nine acres and sixty hundredths of an acre. All of section twenty-one, containing six hundred and forty acres.

Township Four, Range Two.

The south half of the southeast quarter, and the south half of the southwest quarter of section one, containing one hundred and sixty acres. The southwest quarter of section three, containing one hundred and sixty acres. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. The east half, the east half of the northwest quarter, the east half of the southwest quarter, the lot numbered two of the northwest quarter, and the lot numbered two of the southwest quarter of section nineteen, containing six hundred and eighteen acres, and ninety-two hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres.

Township Eight, Range Sixteen.

All of section one, containing six hundred and forty acres. All of section three, containing six hundred and forty acres. All of section five, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. The northwest quarter, the north half of the southwest quarter, the southeast quarter of the southwest quarter, and the southeast quarter of section thirteen, containing four hundred and forty acres. All of section fifteen, containing six hundred and forty acres. The north half of section twenty-three, containing three hundred and twenty acres.

Township Nine, Range Sixteen.

All of fractional section nineteen, containing six hundred and forty-three acres and twenty-two hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. The west half, the south half of the southeast quarter, the northwest quarter of the southeast quarter, and the west half of the northeast quarter of section twenty-five, containing five hundred and twenty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. The northeast quarter, and the southwest quarter of section thirty-one, containing three hundred and twenty acres and forty-eight hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

Township Eight, Range Seventeen.

The southeast quarter, and the lots numbered one, two, three, and four of section nine, containing two hundred and ninety-six acres. The lot numbered one of section twenty-seven, containing eight acres and twenty-five hundredths of an acre. The southwest quarter of the northwest quarter, the southeast quarter of the southeast quarter, the west half of the southeast quarter, the southwest quarter, and the lots numbered one, two, three, four, five and six of section twenty-nine, containing four hundred and fifty-eight acres, and forty-nine hundredths of an acre. All of section thirty-one, containing six hundred and forty acres, and forty-eight hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. All of fractional section thirty-five, containing three hundred and seventy-five acres and four hundredths of an acre.

Township Nine, Range Seventeen.

The northeast quarter of section twenty-five, containing one hundred and sixty acres. The lots numbered one, two, three, and four of section thirty-three, containing one hundred and thirty-six acres.

Township Seven, Range Eighteen.

The south half, and the fractional north half of section five, containing three hundred and seventy acres and forty hundredths of an acre. All of fractional section seven, containing six hundred and forty-two acres and fifty-two hundredths of an acre. All of section nine, containing six hundred and forty acres.

Township Eight, Range Eighteen.

The north half of the southeast quarter, and the southeast quarter of the southeast quarter of section seven, containing one hundred and twenty acres. All of fractional section nine, containing six hundred and thirty-eight acres and sixty-one hundredths of an acre. The lot numbered one of section eleven, containing nineteen acres and seventy-six hundredths of an acre. The lots numbered one, two and three, and the southwest quarter of the southwest quarter of section thirteen, containing ninety-eight acres and sixty-four hundredths of an acre. All of section fifteen, containing six hundred and forty acres. The north half of the northeast quarter, the southwest quarter of the northwest quarter, the southeast quarter of the southeast quarter, the west half of the southeast quarter, and the southwest quarter of section seventeen, containing four hundred acres. All of fractional section nineteen, containing six hundred and forty-one acres and forty-eight hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. All of section twenty-five, containing six hundred and forty acres. All of section twenty-seven, containing six hundred and forty acres. All of fractional section thirty-three, containing six hundred and thirty-eight acres and ninety-two hundredths of an acre.

South of base line and east of San Bernardino meridian, California.

Township Twelve, Range Ten.

All of section thirty-nine, containing six hundred and forty acres. The south half of section thirty-five, containing three hundred and twenty acres.

Township Thirteen, Range Ten.

All of fractional section one, containing six hundred and forty acres and ninety-two hundredths of an acre. All of fractional section three, containing six hundred and forty-two acres, and twenty-four hundredths of an acre. All of section eleven, containing six hundred and forty acres.

Township Thirteen, Range Eleven.

The southwest quarter of section five, containing one hundred and sixty acres. All of fractional section seven, containing six hundred and thirty-nine acres and forty-two hundredths of an acre. The northwest quarter of section nine, containing one hundred and sixty acres.

North of base line and east of San Bernardino meridian, California.

Township One, Range Nine.

The northwest quarter, and the east half of section thirty-three, containing four hundred and eighty acres.

The said tracts of land as described in the foregoing make the aggregate area of (30,899.45) thirty thousand, eight hundred and ninety-nine acres and forty-five hundredths of an acre.

Now know ye, that the United States of America in con-

sideration of the premises and pursuant to the said acts of Congress, have given and granted, and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing, yet excluding and excepting, "all mineral lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute, "shall not be construed to include coal and iron lands."

To have and to hold the same, together with all rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging unto said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington this the twenty-eighth day of November, in the year of our Lord one thousand, eight hundred and ninety-four, and of the Independence of the United States the one hundred and nineteenth.

By the President, GROVER CLEVELAND.

M. McKean, Secretary.

[Seal of the United States Land Office.]

L. Q. C. Lamar,

Recorder of the General Land Office.

Recorded volume 15, pages 1 to 8 inclusive.

[Endorsed]:

State of California, }
County of Kern. } ss.

This certifies that the within instrument was received for record and duly recorded in Kern County Records at request of Wells, Fargo & Co., in Book 10 of Patents, pages 55 to 62, this twenty-first day of February, 1895, at twenty minutes past 9 o'clock A. M. F. S. Benson, County Recorder. ————, Deputy. Fees, $4.45 paid.

Recorded at request of Wells, Fargo & Co., January 17, 1895, at seven minutes past 11 A. M., in Book 6, page 144 of Patents, Los Angeles County Records, E. C. Hodgman, County Recorder, by W. S. Marchant, Deputy. Fees, $4.40.

Recorded at request of Wells, Fargo & Co., February 8, 1895, at forty minutes past 4 P. M., in Book E of Patents, page 71, Records of San Bernardino County, J. W. F. Diss, County Recorder, by J. F. Johnson, Deputy Recorder, folio 33. Fees, $5.45 paid.

Recorded at request of Wells, Fargo & Co., January 21, 1895, at forty minutes past 11 o'clock A. M., in Book No. 7 of Patents, page 138 et seq., Records of San Diego County, California. Jno. F. Forward, Recorder, by C. A. Wallace, Deputy Recorder. Fees, $5.50, paid.

Land department Southern Pacific Railroad Company. Received December 14, 1894.

[Marked]: U. S. v. S. P. 600, Defendants' Exhibit 330, Stephen Potter, Special Examiner.

I certify that I have compared the foregoing document with the original of which it purports to be a copy marked "U. S. vs. S. P. 600, Defendants' Exhibit 330, Stephen Potter, Special Examiner," and find it to be a full, true and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

Defendant's Exhibit No. 331.

PATENT NO. 27.

SOUTHERN PACIFIC—MAIN LINE

RAILROAD LANDS.

INDEMNITY LIMITS.

SAN FRANCISCO AND VISALIA

LAND DISTRICTS,

CALIFORNIA.

1250b600 4-446.

The United States of America, to all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved July 27, 1866, and joint resolution of June 28, 1870, "to aid in the

construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and to secure to the government the use of the same for postal, military and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line under certain conditions and stipulations expressed in said act, from the city of San Francisco to a point of connection with the Atlantic & Pacific Railroad, near the boundary line of said State, and provision is made for granting to the said company "every alternate section of public land designated by odd numbers to the amount of twenty alternate sections per mile on each side of said railroad on the line thereof, and within the limits of twenty miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

And whereas, it is further provided by said act that "whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof under the direction of the secretary of the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not included in the reserved numbers."

And whereas, official statements from the secretary of the interior have been filed in the general land office, showing that the commissioners appointed by the President under the provisions of the fourth section of the said act of July 27, 1866, have reported to him that the line of said railroad and telegraph from San Jose to Tres Pinos and from Alcalde to Mojave, together comprising two hundred and fifty-two miles and four hundred and seventy-nine thousandths of a mile, has been constructed and fully completed and equipped in the manner prescribed by said act of July 27, 1866, and accepted by the President.

And whereas, the following tracts have been selected under the act aforesaid by the duly authorized land agent of the said Southern Pacific Railroad Company as shown by his original lists of selections approved by the local officers and on file in this office.

And whereas, the said tracts of land lie coterminous to the constructed line of said road and are particularly described as follows, towit:

South of base line and east of Mt. Diablo meridian, State of California.

Township Twenty-four, Range Sixteen.

The northeast quarter of the southeast quarter, and the south half of the southwest quarter of section one, containing one hundred and twenty acres. The northeast quarter of the northeast quarter, the south half of the northeast quarter, and the southeast quarter of the northwest quarter of section eleven, containing one

hundred and sixty acres. The northeast quarter, the north half of the northwest quarter, the southeast quarter of the northwest quarter, the east half of the southeast quarter, the northwest quarter of the southeast quarter and the northeast quarter of the southwest quarter of section thirteen, containing four hundred and forty acres. The northeast quarter of section fifteen, containing one hundred and sixty acres. The southeast quarter of the southeast quarter of section seventeen, containing forty acres. The northwest quarter of the northeast quarter, the northeast quarter of the northwest quarter, the east half of the southeast quarter, and the southwest quarter of the southeast quarter of section twenty-five, containing two hundred acres. The north half of the northeast quarter and the southwest quarter of the northeast quarter of section twenty-seven, containing one hundred and twenty acres. The northeast quarter of the southeast quarter of section twenty-nine, containing forty acres. The northwest quarter of the northwest quarter of section thirty-three, containing forty acres.

Township Twenty-eight, Range Twenty-two.

The northeast quarter of the northwest quarter of section eleven, containing forty acres.

Township Twenty-nine, Range Twenty-three.

The east half of the northwest quarter, the fractional west half of the northwest quarter, the east half of the southeast quarter, the west half of the southeast quarter and the fractional southwest quarter of section thirty-

one, containing four hundred and eighty acres, and fifty-four hundredths of an acre.

Township Thirty-one, Range Twenty-four.

The northeast quarter of the southwest quarter, the west half of the southwest quarter, and the fractional southeast quarter of the southwest quarter of section thirteen, containing one hundred and fifty-four acres, and six hundredths of an acre. The fractional north half and the fractional south half of section twenty-five, containing one hundred and twenty-seven acres, and fifty-eight hundredths of an acre.

Township Thirty-two, Range Twenty-four.

The southwest quarter of the northeast quarter, the fractional northwest quarter of the northeast quarter, the fractional southeast quarter of the northeast quarter, and the fractional northeast quarter of the northwest quarter of section one, containing one hundred and twenty-one acres, and four hundredths of an acre. The northwest quarter of section thirteen, containing one hundred and sixty acres. The southeast quarter of section twenty-five, containing one hundred and sixty acres. The southeast quarter of section twenty-seven, containing one hundred and sixty acres. The southeast quarter of section thirty-five, containing one hundred and sixty acres.

Township Fourteen, Range Twenty-five.

The southeast quarter of the southeast quarter of section seven, containing forty acres.

Township Thirty-two, Range Twenty-five.

The lots numbered one and two, and the fractional northwest quarter of section seven, containing two hundred and thirty-one acres and seventy-one hundredths of an acre. The fractional northeast quarter, the fractional north half of the northwest quarter, the south half of the northwest quarter and the south half of section thirteen, containing six hundred and six acres and eleven hundredths of an acre. The lots numbered one, two, three and four, the south half of the southeast quarter, and the south half of the southwest quarter of section fifteen, containing three hundred and two acres and sixty hundredths of an acre. The fractional northeast quarter of section seventeen, containing one hundred and fifty acres and ninety hundredths of an acre. The southwest quarter of section twenty-one, containing one hundred and sixty acres. The southeast quarter of section twenty-nine, containing one hundred and sixty acres. The northwest quarter and the south half of section thirty-one, containing four hundred and ninety-six acres. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

Township Fifteen, Range Twenty-six.

The southwest quarter of the northwest quarter of section three, containing forty acres.

Township Thirty-two, Range Twenty-six.

The southeast quarter of section thirty-one, containing one hundred and sixty acres. The southeast quar-

ter of section thirty-three, containing one hundred and sixty acres. All of section thirty-five, containing six hundred and forty acres.

Township Thirty-two, Range Twenty-seven.

The southeast quarter of section thirty-one, containing one hundred and sixty acres.

Township Sixteen, Range Twenty-eight.

All of section twenty-one, containing six hundred and forty acres. The southeast quarter of the northwest quarter, the northeast quarter of the southeast quarter of section thirty-five, containing three hundred and sixty acres.

Township Seventeen, Range Twenty-nine.

All of fractional section nineteen, containing six hundred and thirty-six acres and fifty-seven hundredths of an acre.

Township Eighteen, Range Twenty-nine.

The southwest quarter of the southeast quarter, the north half of the southeast quarter and the southwest quarter of section five, containing two hundred and eighty acres. The fractional west half of section nineteen, containing three hundred and twenty-one acres, and forty-eight hundredths of an acre.

Township Twenty-two, Range Thirty.

The lots numbered three, four and five, and the southeast quarter of the southwest quarter of section thirty-

one, containing one hundred and nine acres, and sixty-four hundredths of an acre.

Township Twenty-five, Range Thirty-one.

The northwest quarter of the northwest quarter of section twenty-three, containing forty acres. The northwest quarter of the northwest quarter, and the southeast quarter of the southeast quarter of section twenty-seven, containing eighty acres. The southwest quarter of the northwest quarter of section thirty-five, containing forty acres.

Township Twenty-five, Range Thirty-two.

The fractional south half of section nineteen, containing three hundred and twenty acres, and twenty-eight hundredths of an acre. The lots numbered one, two, three and four, the east half of the northwest quarter, the east half of the southwest quarter and the east half of section thirty-one, containing six hundred and forty-two acres and twelve hundredths of an acre.

North of base line and west of San Bernardino meridian, State of California.

Township Nine, Range Sixteen.

The south half of the southeast quarter, the northwest quarter of the southwest quarter and the south half of the southwest quarter of section seventeen, containing two hundred acres. The east half of the northeast quarter and the northeast quarter of the southeast quarter of section twenty-five, containing one hundred and twenty acres.

The said tracts of land as described in the foregoing make the aggregate area of (11,260.68) eleven thousand two hundred and sixty acres, and sixty-eight hundredths of an acre.

Now know ye, that the United States of America in consideration of the premises and pursuant to the said acts of Congress, have given and granted, and by these present do give and grant unto said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing, yet excluding and excepting "all mineral lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute "shall not be construed to include coal and iron lands."

To have and to hold the same together with all rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging unto said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington this the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and twentieth.

By the President, GROVER CLEVELAND,

M. McKean, Secretary.

[Seal of United States Land Office]
L. Q. C. Lamar,

Recorder of the General Land Office.

Recorded in volume 15, pages 205 to 211, inclusive.

[Endorsed]: Recorded at the request of Wells, Fargo & Co., August 9, 1895, at three minutes past 4 P. M., in volume F of Patents, page 156, Records of Monterey County, Cal. W. H. Pyburn, County Recorder. By P. W. Soto, Deputy. Recorder's Fees, $2.50.

4918 Filed for record at the request of Wells, Fargo & Co., August 20, A. D. 1895, at twenty minutes past 8 o'clock A. M., and recorded in volume P of Patents, pages 361 et seq., Fresno County Records. W. W. Machen, Recorder. By Jno. La Blanc, Deputy Recorder. 23. 2.70.

Recorded at the request of Wells, Fargo & Co., August 22, A. D. 1895, at thirty-five minutes past 9 o'clock A. M., in volume "P" of Patents, page 307, Tulare County Records. Ira Chrisman, Recorder. By Comer Robertson, Deputy Recorder. 23 f. $2.70.

No. 4. Recorded at the request of Wells, Fargo & Co., August 26, A. D. 1895, at ten minutes past 10 o'clock A. M., in volume One of Patents, page 147 et seq., Kings County Records. F. J. Peacock, Recorder. By E. L. Peacock, Deputy Recorder. 24 f. $3.10.

Filed for record at the request of Wells, Fargo & Co., August 28, A. D. 1895, at thirty minutes past 9 o'clock A. M., and recorded in volume 10 of Patents, page 68 et seq., Kern County Records. F. S. Benson, Recorder. By ————, Deputy Recorder. Fees, $3.15. Paid.

[Stamped on face]: Land Dep't S. P. R. R. Co. Received Aug. 6, 1895.

[Marked]: U. S. vs. S. P. 600, Defendants' Exhibit 331. Stephen Potter, Special Examiner.

I certify that I have compared the foregoing document with the original of which it purports to be a copy marked "U. S. vs. S. P. 600, Defendants' Exhibit 331. Stephen Potter, Special Examiner." and find it to be a full, true and correct copy of said original.

STEPHEN POTTER,
Special Examiner.

San Francisco, August 13, 1896.

Defendant's Exhibit No. 332.

CONTRACT FOR DEED.

G. 291 (2 29-88-2,000)

Southern Pacific Railroad Company.

No. 9654. Land Department.

This agreement, made at San Francisco, California, this first (1st) day of June, A. D. 1888, between the Southern Pacific Railroad Company, party of the first part, and William Sexton, of the city and county of San Francisco, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part, the following tract of land, situated in the county of Kern, State of California, and known and designated on the public survey of the United States as northeast quarter (N. E. ¼) of section seventeen (17), township nine (9) north, range fifteen (15) west, San

Bernardino base and meridian, containing one hundred and sixty (160.00) 00-100 acres, for the sum of four hundred ($400.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part, the said sum of four hundred ($400.00) 00-100 dollars, as follows, to-wit: Eighty ($80.00) 00-100 dollars, and also $22.40, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last-mentioned sums have this day been fully paid), and the remainder, towit: the sum of three hundred and twenty ($320.00) 00-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent per annum, both in United States gold coin, of the present standard of value, at its office in the city and county of San Francisco, on or before the first day of June, 1893; and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of

said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain, and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operation and repair of said railroads, and with the condition that the party of the second part, heirs, and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed, that until the full payment of said purchase money, interest, taxes and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the

second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may without notice, enter upon, take and hold possession of the said premises with all the improvements thereon.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part, does not guarantee the possession of them to the party of the second part, and

will not be responsible to him, for damages or cost in case of his failure to obtain and keep such possession.

It is further agreed that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed, that the party of the second part shall pay $3.00 for expenses of the knowledgments of the deed that shall be issued in this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its

secretary, and land agent, and the party of the second part has signed his name thereto.

JEROME MADDEN
Land Agent S. P. R. R. Co.

J. L. WILLCUTT,
Secretary S. P. R. R. Co.

WM. SEXTON. [Seal]

Schedule of prices at which the lands described in this contract have been sold this first (1st) day of June, 1888.

Fraction.	Sec.	Tp.	Range.	B. & M.	No. of Acres.	Rate per Acre.	Amount.
N. E. ¼	17	9 N.	15 W.	S. B.	160.00	$2.50	$400.00

JEROME MADDEN,
Land Agent S. P. R.R. Co.

———— the part—, of the second part in the within contract No. ——— for and in consideration of ——— dollars, to ——— in hand paid do — hereby sell, assign, and transfer all ——— right, title, interest and claim in and to the within described tract or parcel of land, and the within contract ———— unto ————, h —— heirs and assigns forever subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under ——— hand and seal—, this ———— day of ———— A. D. 18——.

———— [Seal]

———— [Seal]

St[illegible] California,
County of ————. } ss.

On this ———— day of ———— in the year one thousand eight hundred and ———— before me ———— ——, a ———— in and for the said county, personally appeared ———————— known to me to be the person whose name ———————— subscribed to the above instrument, and acknowledged to me that ———————— executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

————————

Notary Public.

On this ———— day of ———— 18——, in consideration of the above and foregoing assignment to me, ——— hereby agree with the assignor therein named and with the Southern Pacific Railroad Company, to do and perform all the stipulations and conditions in the within contract required to be done and performed by the part —— thereto of the second part.

———————— [Seal]

———————— [Seal]

P. O. Address ————————

San Francisco,Cal. ————, 18——.

The Southern Pacific Company hereby consents to the above assignment to ————————————

By ————————

Its Land Agent.

[Endorsed]: Unpatented Lands No. 9654. Contract for a deed. Southern Pacific Railroad Company to William Sexton. Dated June 1, 1888. Interest $22.40 due on the first day of June each year. Remainder of principal $320.00 due on the first day of June, 1893.

[Marked] U. S. vs. S. P. 600. Defendant's Exhibit No. 332. Stephen Potter, special examiner.

I certify that I have compared the above document with the original of which it purports to be a copy marked "U. S. vs. S. P. 600, Defendants' Exhibit No. 332, Stephen Potter, Special Examiner," and find it to be a full, true and correct copy of said original.

San Francisco, August 13, 1896.

STEPHEN POTTER,
Special Examiner.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES OF AMERICA,
Complainant and Appellee,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY; D. O. MILLS and HOMER S. KING, trustees; CENTRAL TRUST COMPANY of New York,
Defendants and Appellants.

No. 600.

Assignment of Errors.

The defendants, by the undersigned, their counsel and attorney, in connection with their petition and appeal herein, say that the decree in this case is erroneous and against their just rights, in the following particulars:

1.

The court erred in adjudging and decreeing the complainant the owner, by title in fee simple absolute, or otherwise, of the lands, or any thereof, described in the decree as so owned by the complainant; and in not adjudging that the complainant take nothing as to any of such lands. because, as shown by the evidence:

1st. A large portion of the lands described in the decree as owned by the United States, are situated within

the primary limits of the land grant made to the defendant Southern Pacific Railroad Company by the act of Congress approved July 27, 1886 (Vol. 14 U. S. Stats., p. 292) and joint resolution of Congress approved June 28, 1870 (Vol. 16 U. S. Stat., p. 382), and are not embraced by any exception to the grant of lands thereby made; and defendant Southern Pacific Railroad Company duly constructed the railroad contemplated, and fully performed all the conditions imposed, by the said act and joint resolution; and the railroad so constructed has been duly accepted and approved by the proper officers of the United States. The defendants are, therefore, the owners by title in fee simple, absolute and indefeasible, of all the lands in this paragraph referred to.

2d. Another large portion of the lands described in the decree as owned by the United States, are situated within the indemnity limits of the land grant made to the defendant Southern Pacific Railroad Company by the act of joint resolution mentioned in the next preceding paragraph, and are not embraced by any exception to the grant of lands thereby made; and all the odd-sections within the primary and indemnity limits of the land grant made to the defendant Southern Pacific Railroad Company by the said act and joint resolution, not finally disposed of by the United States prior to July 27, 1866, are insufficient to make or equal the amount of land thereby granted to the said defendant company. For these reasons, and the other reasons set forth in the next preceding paragraph, the defendants are also the owners by title in fee simple, absolute and indefeasible, of all the lands in this paragraph referred to.

3d. Some of the lands referred to in the next preceding paragraphs were duly selected by the defendant Southern Pacific Railroad Company, under the direction of the secretary of the interior, as indemnity lands granted to it by the said act and joint resolution. As to which selected lands the defendants are, for the reasons hereinbefore set forth, entitled to the issue of patents from the United States to the defendant Southern Pacific Railroad Company; and are also entitled to select, and receive patents for, all of the lands referred to in the "1st" and "2d" paragraphs hereof which remain unselected.

4th. Another large portion of the lands described in the decree as owned by the United States, are situated within the indemnity limits of the land grant made to the defendant Southern Pacific Railroad Company by the act of Congress approved March 3, 1871 (Vol. 16 U. S. Stat., p. 573), and are not embraced by any exception to the grant of land thereby made; the said company duly constructed the railroad contemplated, and fully performed all the conditions imposed, by the last mentioned act of Congress; the railroad so constructed was duly accepted and approved by the proper officers of the United States; and all the odd-sections, within the primary and indemnity limits of the land grant made to the defendant Southern Pacific Railroad Company by the said act of March 3, 1871, are insufficient to make or equal the amount of lands thereby granted. The defendants are, therefore, the owners by title in fee simple, absolute and indefeasible, of all the lands in this paragraph referred to.

5th. Some of the lands referred to in the next preced-

ing paragraph were duly selected by the defendant Southern Pacific Railroad Company, under the direction of the Secretary of the Interior, as indemnity lands granted to it by the said act of March 3, 1871. As to which selected lands the defendants are, for the reasons set forth in the "4th" paragraph hereof, entitled to the issue of patents from the United States to the defendant the Southern Pacific Railroad Company; and are also entitled to select, and receive patents, for all the lands referred to in the "4th" paragraph hereof which remain unselected.

6th. The defendants D. O. Mills and Homer S. King are trustees under a deed of trust duly executed on April 1, 1875, by the defendants Southern Pacific Railroad Company, and the defendant Central Trust Company of New York is the trustee under a deed of trust duly executed on August 25, 1888; which deeds conveyed all the lands described in the decree as owned by the United States, to secure the payment of, and out of the proceeds of the sale of the lands conveyed to redeem and pay, a large number of bonds issued and sold by the defendant Southern Pacific Railroad Company for several millions of dollars paid to it by numerous bona fide purchasers thereof, who still hold the bonds so purchased, unpaid. The said trustees are, therefore, bona fide purchasers of all the said lands so conveyed to them; and the defendants' title is expressly confirmed by the act of March 2, 1896 (29 U. S. Stats., p. 42), to such of those lands as are covered by patents from the United States to the defendant Southern Pacific Railroad Company.

II.

The court erred in adjudging and decreeing that all patents issued by the United States to the defendant Southern Pacific Railroad Company, for all, or any, of the lands described in the decree as owned by the complainant, to be null, void or vacated; because, as shown by the evidence:

1st. Several of such patents are for lands referred to in the "1st" paragraph of assignment "I" hereof, and were duly selected by the defendant Southern Pacific Railroad Company under the direction of the Secretary of the Interior, prior to the issue of such patents, as primary limits lands granted to the said company by the act of 1866 and joint resolution of 1870, hereinbefore mentioned. For which reasons, and the other reasons set forth in the "1st" paragraph of the said assignment "I", such patents were duly and lawfully issued and are valid.

2d. Several other of such patents are for lands referred to in the "3d" paragraph of assignment "I" hereof; and for the reasons set forth in the "1st", "2d" and"3" paragraphs of the said assignment "I", such patents were duly and lawfully issued and are valid.

3d. Several other of such patents are for lands referred to in the "5th" paragraph of assignment "I" hereof; and for the reasons set forth in the "4th" and "5th" paragraphs of said assignment "I", such patents were duly and lawfully issued and are valid.

4th. All patents issued to the defendant Southern Pacific Railroad Company and adjudged null, void and vacated by the decree, are for lands held by the trustee

defendants in trust for bona fide purchasers and holders of outstanding bonds, under the trust deeds hereinbefore set forth; and for the reasons given in the "6th" paragraph of assignment "I" hereof; the said trustees are bona fide purchasers of the land subject of all the patents adjudged, null, void and vacated by the decree. Wherefor such patents, and the title of the trustee defendants to the lands thereof, are confirmed by the act of Congress approved March 2, 1896 (29 U. S. Stats., p. 42); and all of such patents are valid.

III.

The court erred in ordering, adjudging or decreeing the defendants enjoined or restrained from having or claiming any right, title or interest in, or lien upon, any or all of the lands described in the decree as owned by the United States; for the reasons given in assignments "I" and "II" hereof, and the several paragraphs thereunder.

IV.

For the reasons hereinbefore assigned, the court erred in adjudging that the complainant have and recover its costs of suit herein; and in not adjudging that the defendants have and recover their costs.

Wherefore the defendants prays that the said decree be reversed, excepting in so far as it adjudges and decrees that the complainant take nothing; and that the said Circuit Court be directed to enter a decree adjudging and decreeing that the complainant take nothing as to any of the lands or patents referred to in the decree appealed

from—and that the defendants have and recover their costs.

WM. SINGER, JR.,
Attorney for the Defendants.

WM. F. HERRIN,
Counsel for the defendants.

[Endorsed]: No. 600. United States Circuit Court Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Railroad Company et al. Assignment of errors. Filed June 11, 1898. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., rooms 61-2, Union Trust building, San Francisco, Cal. Attorney for _____.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES OF AMERICA, Complainant and Appellee, vs. SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and CENTRAL TRUST COMPANY OF NEW YORK, Defendants and Appellants.	No. 600.

Petition for Appeal.

The said defendants, conceiving themselves aggrieved by the decree made and entered herein on June 6, 1898,

appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in their assignment of errors filed herewith; and they pray that their appeal may be allowed, and that a true copy of the record, opinion of the court, assignment of errors, and all proceedings in the cause under the seal of this Court and the hand of its clerk, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioners further pray that, upon giving a good and sufficient bond to be approved by this Court, all proceedings in this cause and upon said decree may be stayed, pending their appeal.

Dated June 11, 1898.

WM. SINGER, Jr.,
Attorney for the Defendants.

WM. F. HERRIN,
Counsel for the Defendants.

Order Allowing Appeal.

The foregoing claim of appeal, and prayer for supersedeas, are allowed and granted; the supersedeas to take effect upon the filing of a good and sufficient bond in the sum of three thousand dollars, conditioned that the defendants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

It is further ordered that a true copy of the record, opinion of the court, assignment of errors, and all proceedings in the cause, under the seal of this Court and

the hand of its clerk, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

ROSS,
Circuit Judge.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Company et al. Petition and order of appeal. Filed June 11, 1898. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., rooms 61-2, Union Trust Building, San Francisco, Cal. Attorney for _____.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES OF AMERICA, Complainant and Appellee, vs. SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees; and CENTRAL TRUST COMPANY OF NEW YORK, Defendants and Appellants.	No. 600.

Bond on Appeal.

We, John D. Bicknell and Hancock Banning, both of the county of Los Angeles, State of California, are held and firmly bound to pay unto the United States of Amer-

ica the sum of three thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The above-named defendants have been allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and a supersedeas, from the decree entered in the above-entitled cause on June 6, 1898; and the condition of this obligation is, that if the defendants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void—otherwise to remain in full force.

Dated, signed and sealed on June 11, 1898.

JOHN D. BICKNELL. [Seal]

HANCOCK BANNING. [Seal]

State of California, }
County of Los Angeles. } ss.

John D. Bicknell and Hancock Banning, being duly sworn, each for himself, says: I am one of the sureties on the foregoing bond, and subscribed my name thereto. I am a resident of and freeholder within the county of Los Angeles, State of California, and am worth the sum of three thousand dollars, over and above all my just debts and liabilities, in property within the said county which is not exempt from execution.

JOHN D. BICKNELL,

HANCOCK BANNING.

Subscribed and sworn to before me on June 11, 1898.

R. W. DARBY,

Notary Public in and for Los Angeles County, California.

[Seal]

The foregoing bond is approved.

ROSS,

Circuit Judge.

[Endorsed]: No. 600. United States Circuit Court, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Railroad Company et al. Bond on appeal. Filed June 11, 1898. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., rooms 61-2, Union Trust building, San Francisco, Cal. Attorney for defendants.

In the United States Circuit Court of Appeals, Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES,
Appellee.

Stipulation.

One. It is stipulated that the following original documents, forming part of the evidence in this cause, being necessary to inspection by this Court and by the Supreme Court, if appealed thereto, shall be sent up as original doc-

uments with the transcript of the record in accordance with subdivision 4 of Rule 14 of the rules of this court, and subdivision 4 of Rule 8 of the rules of the Supreme Court, towit:

Plaintiff's Exhibit 13, being maps of sections of Atlantic & Pacific Railroad.

Plaintiff's Exhibit 14, being map of another section of Atlantic & Pacific Railroad.

Plaintiff's Exhibit 15, being map of another section of Atlantic & Pacific Railroad.

Defendants' Exhibits 260, 263, 267, 270, 273, 276, 279, 282, 285, 288, 291, 292, 293, 294, 295, 296 and 301, being maps of sections of constructed Southern Pacific Railroad.

Defendants' Exhibits 302, 303, 304, 304, 305, 306, 307, 308, 309 and 310, being Southern Pacific withdrawal maps.

Defendants' Exhibit 323, being map of section Southern Pacific withdrawal.

And it is stipulated that an order of Court may be entered by the presiding judge of the Circuit Court for the Southern District of California, in accordance with this agreement.

Two. It is further stipulated that all duplicates of the same instrument or documents offered in evidence shall be omited from the record, and in making a transcript of the record upon appeal, the clerk shall transcribe only one copy of any document offered by either or by both parties, which shall be considered in evidence with the same effect as if all copies had been transcribed.

Three. Whereas, upon taking testimony in this cause, it was stipulated that either party might offer in evidence, so far as material and relevant, documents and depositions in evidence in other cases in the Circuit Court for the Southern District of California, and,

Whereas, it appears that various documents and depositions, not material or relevant to this cause, have been introduced in connection with other material and relevant testimony, therefore,

It is stipulated that the following depositions and document, not being material or relevant to the issues or questions involved in this cause, shall be omitted from the transcript and from the printed record, towit:

1. Omit Plaintiff's Exhibits 8, 9, 10, 11 and 12, being maps of location of Atlantic & Pacific Railroad from Springfield, Missouri, to the Colorado river, there being no point or controversy as to the sufficiency of the same in this cause.

2. Omit Plaintiff's Exhibits 61 and 62, being maps.

3. Omit plaintiff's Exhibit 63, being deposition of Coffin, together with all exhibits offered in taking the same.

4. Omit Plaintiff's Exhibit 65, being deposition of Lamoreux, together with all exhibits offered in taking the same.

5. Omit Plaintiff's Exhibit 67, being deposition of Massey, together with all exhibits offered in taking the same.

6. Omit Plaintiff's Exhibit 68, being deposition of McGee, together with all exhibits offered in taking the same.

7. Omit Plaintiff's Exhibit 69, being report of Drew,

filed January 15, 1894, together with all depositions and exhibits therein contained.

8. Omit Plaintiff's Exhibit 70, being report of Drew, filed April 6, 1894, together with all depositions and exhibits contained therein.

9. Omit Defendants' Exhibit 22, being deposition of Madden, together with all exhibits offered in taking the same, except the first thirteen questions, answers, and intermediate matter; and except the four last questions, answers and intermediate matter in examination on the forenoon of September 11, 1893; and except the first three questions answers and intermediate matter in examination on the afternoon of September 11, 1893; and except the first ten offers of evidence on September 18, 1893. All of which evidence was duly objected to by plaintiff.

10. Omit Defendants' Exhibit 23, being deposition of Hood, together with all exhibits offered in taking the same.

11. Omit Defendants' Exhibit 25, being deposition of Gates, together with all exhibits offered in taking the same.

12. Omit Defendants' Exhibit 27, being deposition of Hillyer, together with all exhibits offered in taking the same.

13. Omit Defendants' Exhibit 28, being deposition of Hayes; together with all exhibits offered in taking the same.

14. Omit Defendants' Exhibit 34, being deposition of Pope; together with all exhibits offered in taking the same.

15. Omit Defendants' Exhibits 48 to 75, inclusive, being maps and photographs.

16. Omit Defendants' Exhibit 76, being deposition of L. H. Long; together with all exhibits offered in taking the same.

17. Omit Defendants' Exhibit 77, being deposition of Jensen; together with all exhibits offered in taking the same.

18. Omit Defendants' Exhibit 78, being deposition of Pratt; together with all exhibits offered in taking the same.

19. Omit Defendants' Exhibit 79, being deposition of McGee; together with all exhibits offered in taking the same.

20. Omit Defendants' Exhibit 80, being deposition of Spencer; together with all exhibits offered in taking the same.

21. Omit Defendants' Exhibit 81, being deposition of Chambers; together with all exhibits offered in taking the same.

22. Omit Defendants' Exhibit 82, being deposition of Bloss; together with all exhibits offered in taking the same.

23. Omit Defendants' Exhibit 83, being deposition of Thompson; together with all exhibits offered in taking the same.

24. Omit Defendants' Exhibit 84, being deposition of Niven; together with all exhibits offered in taking the same.

25. Omit Defendants' Exhibit 85, being deposition of

Orme; together with all exhibits offered in taking the same.

26. Omit Defendants' Exhibit 86, being deposition of Gardiner; together with all exhibits offered in taking the same.

27. Omit Defendants' Exhibits 87, being deposition of Robinson; together with all exhibits offered in taking the same.

28. Omit Defendants' Exhibit 88, being report of Draper.

29. Omit Defendants' Exhibit 93, being deposition of Pearson; together with all exhibits offered in taking the same.

30. Omit Defendants' Exhibits 94 and 95, being maps.

31. Omit Defendants' Exhibit 96, being deposition of Parker; together with all exhibits offered in taking the same.

32. Omit Defendants' Exhibit 97, being a map.

33. Omit Defendants' Exhibit 99, being deposition of Lamme; together with all exhibits offered in taking the same.

34. Omit Defendants' Exhibit 100, being deposition of French; together with all exhibits offered in taking the same.

35. Omit Defendants' Exhibit 101, being Exhibit "B" to deposition of Pope in case 184.

36. Omit Defendants' Exhibit 103, being Exhibit "D" to deposition of McGee in case 184.

37. Omit Defendants' Exhibit 104, being an exhibit in Chamber's deposition in case 184.

38. Omit from Defendants' Exhibit 105, being the report of Examiner Potter in case 184, the following parts thereof:

Testimony of Clarence T. Cleve, and exhibits offered therewith; testimony of Peter Hamilton, and exhibits offered therewith; testimony of Thomas Allison, and exhibits offered therewith; testimony of William Ferguson, and exhibits offered therewith; testimony of James Hamilton, and exhibits offered therewith; testimony of Alexander Cook, and exhibits offered therewith; testimony of Ira H. Bradshaw, and exhibits offered therewith; deposition of Jerome Madden, and exhibits offered therewith, excepting the parts above specified under Defendants' Exhibit 22, as herein before written; omit deposition of William Hood, and exhibits offered therewith; testimony of J. B. Randoll, and exhibits offered therewith; testimony of D. J. Schofield, and exhibits offered therewith; Defendants' Exhibits 103 to 119, both inclusive, in case 184; Defendants' Exhibits 123 to 128, both inclusive, in case 184; deposition of William H. Pratt, and exhibits offered therewith; deposition of A. N. Towne, and exhibits offered therewith; testimony of E. H. Lamme, and exhibits offered therewith; Defendants' Exhibits "N," "O," "P," and "Q," in case 184; Defendants' Exhibits "R," "S," "T," "U," "V," "W," "X," "Y," and "Z," in case 184.

39. Omit from Defendants' Exhibit 106, being the report of E. H. Lamme in case 184, the following parts thereof:

Testimony of E. N. Robinson, and exhibits offered

therewith; testimony of J. A. Graves, and exhibits offered therewith; testimony of L. H. Long, and exhibits offered therewith; testimony of E. W. Jensen, and exhibits offered therewith; Defendants' Exhibits 70, 71, 72, 77, 83, and 84 in case 184, being copies of letters; Defendants' Exhibits 85, 86, and 87 in case 184, being Exhibits "B," "C," and "D" to the defendants' answer therein; Defendants' Exhibit 88 in case 184, being a map; testimony of John Robarts, and exhibits offered therewith; testimony of L. E. Mosher, and exhibits offered therewith; testimony of W. D. Gould, and exhibits offered therewith; testimony of John Kenealey, and exhibits offered therewith; testimony of Thomas Goss, and exhibits offered therewith; testimony of J. F. Holbrook, and exhibits offered therewith; testimony of McH. Pierce, and exhibits offered therewith; testimony of Jonathan Garber, and exhibits offered therewith; testimony of W. E. McVay, and exhibits offered therewith; testimony of Nathan Cole, Jr., and exhibits offered therewith; testimony of M. W. Stimson, and exhibits offered therewith; testimony of Calvin Hartwell, and exhibits offered therewith; testimony of M. D. Painter, and exhibits offered therewith; testimony of Stefano Cuneo, and exhibits offered therewith; testimony of G. Suraco, and exhibits offered therewith; testimony of Joseph W. Furniva*n*, and exhibits offered therewith; testimony of T. F. Mitchell, and exhibits offered therewith; testimony of Richard Kitchline, and exhibits offered therewith; testimony of J. Harps, and exhibits offered therewith; testimony of Ramon Perea, and exhibits offered therewith; testimony of J. F.

Holbrook, and exhibits offered therewith; testimony of J. F. Humphreys, and exhibits offered therewith; testimony of Pablo Lopez, and exhibits offered therewith; testimony of J. M. Blanchard, and exhibits offered therewith; testimony of D. M. Sutherland, and exhibits offered therewith; testimony of Harry Chandler, and exhibits offered therewith; Defendants' Exhibits 44, 45, 46, 47, 48, 49, 89, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 116, 117, 118, 119 and 120, in case 184, being copies of deeds and contracts; Defendants' Exhibit 121, in case 184, being a homestead certificate; Defendants' Exhibits 122, 124, 125, 126, 129, 130, 131, 132, and 133, in case 184, being copies of deeds and contracts.

40. Omit Defendants' Exhibit 107, being the report of Hugh M. Sterling, in case 184, together with the exhibits offered therewith.

41. Omit from Defendants' Exhibit 108, being duplicate of Defendants' Exhibit 106, herein, the parts thereof specified under Defendants' Exhibit 106, as hereinbefore written.

42. Omit Defendants' Exhibit 109, being a copy of the Hancock survey.

43. Omit Defendants' Exhibit 110, being exhibits with Parker's deposition.

44. Omit Defendants' Exhibit 111, being a map.

45. Omit Defendants' Exhibits 112, 113, 114, 115, 150, 155, 166, 167, 168, being copies of letters.

46. Omit Defendants' Exhibit 170, being a map.

47. Omit Defendants' Exhibit 175, being tracing of a map.

48. Omit Defendants' Exhibit 176, being a letter.

49. Omit Defendants' Exhibit 177, being a map.

Four. It is further stipulated that all copies of the letter, dated March 9, 1872, and of the record thereof, from Delano, secretary of the interior, to Hillyer, attorney of the Atlantic and Pacific Railroad; and all copies of the letter, dated March 9, 1872, and of the record thereof, from Delano, secretary of the interior, to the commissioner of the general land office, offered by either party or by both parties, shall be omitted from the transcript and from the printed record.

Five. It is further stipulated that if it shall be discovered by either party before the submission of this case in the Circuit Court of Appeals, that any evidence has been omitted from the transcript, which he deems material to the cause, that upon his order, the clerk of the circuit court shall forthwith cause such omitted part to be transcribed as a part of the record.

JOSEPH H. CALL,
Special Assistant United States attorney and counsel for United States.

WM. F. HERRIN and WM. SINGER, Jr.,
Counsel and attorney for defendants.

[Endorsed]: No. 600. United States Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Company et al., appellants, vs. The United States, appellee. Stipulation. Filed July 1, 1898. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California.

UNITED STATES,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
No. 600.

Request to Include Defendant's Exhibit No. 291.

W. M. Van Dyke, clerk of said court:

In pursuance with paragraph 5 of the stipulation between the parties to said cause, and on file in said court, relating to the transcribing and making up of the record to be used upon appeal to the Circuit Court of Appeals, you will please include as a part of the transcript of the record upon appeal Defendants' Exhibit 291, being map of the eleventh section of the Southern Pacific Railroad (main line). I deem this exhibit material to the cause.

Sept. 22, 1898.

JOSEPH H. CALL,
Special Assistant United States attorney.

[Endorsed]: No. 600. United States Circuit Court, Southern District of California. The United States of America, vs. Southern Pacific Railroad Company et al. Request. Filed Sept. 22, 1898. Wm. M. Van Dyke, Clerk.

At a stated term, towit, the August term, A. D. 1898, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles on Monday, the fourteenth day of November, in the year of our Lord, one thousand eight hundred and ninety-eight, Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
} No. 600.

Order to Send up Documents.

Pursuant to the stipulation signed by the attorneys and counsel for the respective parties, on file herein, it is ordered that the following original documents, forming part of the evidence in this cause being necessary to inspection by the United States Circuit Court of Appeals for the Ninth Circuit, and by the supreme court, if appealed thereto, shall be sent up as original documents with the transcript of the record in accordance with subdivision 4 of rule 14 of the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and subdivision 4 of rule 8 of the rules of the supreme court, towit:

Plaintiff's Exhibit 13, being maps of sections of Atlantic & Pacific Railroad.

Plaintiff's Exhibit 14, being map of another section of Atlantic & Pacific Railroad.

Plaintiff's Exhibit 15, being map of another section of Atlantic & Pacific Railroad.

Defendants' Exhibits 260, 263, 267, 270, 273, 276, 279, 282, 285, 288, 291, 292, 293, 294, 295, 296, and 301, being maps of sections of constructed Southern Pacific Railroad.

Defendants' Exhibits 302, 303, 304, 305, 306, 307, 308, 309, 310, being Southern Pacific withdrawal maps.

Defendants' Exhibit 323, being map of section Southern Pacific withdrawal.

The same original exhibits to be delivered to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to be returned to the files of this cause in this court upon the final determination of the appeal herein, by the United States Circuit Court of Appeals, or by the Supreme Court of the United States, if appealed thereto.

In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and HOMER S. KING, Trustees, and THE CENTRAL TRUST COMPANY of New York,

Defendants.

No. 600.

Clerk's Certificate to Transcript.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, do hereby certify the foregoing two thousand six hundred and forty-three written and printed pages numbered from 1 to 2643, inclusive, and comprised in eleven (11) volumes, numbered respectively volumes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, including diagrams, maps, and plats (excepting therefrom original exhibits, viz., Plaintiff's Exhibit 13, being maps of sections of Atlantic & Pacific Railroad; Plaintiff's Exhibit 14, being map of another section of Atlantic & Pacific Railroad; Plaintiff's Exhibit 15, being map of another section of Atlantic & Pacific Railroad;

Defendants' Exhibits 260, 263, 267, 270, 273, 276, 279, 282, 285, 288, 292, 293, 294, 295, 296, and 301, being maps of sections of constructed Southern Pacific Railroad; Defendants' Exhibits 302, 303, 304, 305, 306, 307, 308, 309, and 310, being Southern Pacific withdrawal maps; Defendants' Exhibit 323, being map of section Southern Pacific withdrawal, which said original exhibits are by order of Court transmitted herewith, and made a part hereof, and also excepting certain depositions and exhibits which are omitted from the transcript pursuant to the stipulation of the parties hereinbefore set forth, to be a full, true, and correct copy of the record, pleadings, papers, opinion of the Court, assignment of errors, and of all proceedings in the above and therein entitled cause, and that the same together constitute the transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in said cause, under and pursuant to said stipulation.

I do further certify that the cost of the foregoing record is $2495.15, the amount whereof is to be paid me by the Southern Pacific Railroad Company, one of the appellants in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Circuit Court of the United States of America of the Ninth Judicial Circuit, in and for the Southern District of California, this twenty-third day of November, in the year of our Lord, one thousand

eight hundred and ninety-eight, and of the independence of the United States the one hundred and twenty-third.

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

[Canceled 10 cent Revenue Stamp.]

[Seal]

[Endorsed]: No. 494. United States Circuit Court of Appeals, for the Ninth Circuit. The Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, and The Central Trust Company of New York, appellants, vs. The United States of America, appellee. Appeal from Circuit Court of the United States for the Southern District of California. Transcript of Record. Filed November 25, 1898.

F. D. MONCKTON,
Clerk.

By Meredith Sawyer,
Deputy Clerk.

At a stated term, to wit: the October term A. D. 1898, of the United States Circuit Court of Appeals, for the Ninth Circuit, held at the courtroom, in the City and County of San Francisco, on Wednesday, third day of May in the year of our Lord one thousand eight hundred and ninety-nine. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES OF AMERICA,
Appellee.
No. 494.

Order of Submission.

Ordered, appeal argued by William Singer, Jr., Esq., counsel for appellants, and Joseph H. Call, Esq., special United States attorney, and submitted to the Court for consideration and decision.

In the United States Circuit Court of Appeals for the Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and CENTRAL TRUST COMPANY of New York,
Defendants and Appellants,
vs.
UNITED STATES OF AMERICA,
Plaintiffs and Appellees.
} No. 494.

UNITED STATES OF AMERICA,
Plaintiffs and Appellants,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and CENTRAL TRUST COMPANY of New York,
Defendants and Appellees.
} No. 495.

Opinion U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States, for the Southern District of California.

This is a suit in equity brought by the United States against the Southern Pacific Railroad Company and the other defendants named in the bill, to quiet the title to certain lands in California embraced within the granted

and indemnity limits of the Atlantic & Pacific Railroad Company under the act of Congress, approved July 27, 1866 (14 Stats. at Large, 492). The lands in controversy are situated on both sides of that part of the line of the road as located between The Needles on the Colorado river and San Buenaventura on the Pacific Coast.

The act of July 27, 1866, granted lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to carry out the purposes of the grant the act incorporated the Atlantic & Pacific Railroad Company, and authorized that company to lay out, locate, and construct a continuous line of railroad and telegraph from the town of Springfield, in the State of Missouri, thence westerly to the head waters of the Colorado Chiquito, and "thence along the thirty-fifth parallel of latitude as near as may be found most suitable for a railway route to the Colorado river, at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific."

For the purpose of aiding in the construction of this road and telegraph line to the Pacific Coast, the third section of the act granted to the Atlantic & Pacific Railroad Company every alternate section of public land, not mineral, designated by odd numbers, to the amount of ten alternate sections per mile on each side of said road whenever it passed through any State, and whenever on the line thereof the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road should be designated by a

plat thereof, filed in the office of the commissioner of the General Land Office. It was further provided that whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers.

The sixth section of the act provided: "That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this act."

The eighth section of the act provided: "That each and every grant, right, and privilege herein are so made and given to and accepted by said Atlantic & Pacific Railroad Company upon and subject to the following conditions, namely: that the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, Anno Domini eighteen hundred seventy-eight."

The eighteenth section of the act provided: "That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic & Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco; and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided; and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic & Pacific Railroad herein provided for."

In 1872 the Atlantic & Pacific Railroad Company filed in the office of the Commissioner of the General Land Office certain maps, designating its line of railroad, as located, from a point selected by the company for crossing the Colorado river by the route deemed by the company the most practicable and eligible to the Pacific. The line of road so designated ran from a point on the Colorado river near the thirty-fifth parallel (The Needles) to San Buenaventura, on the Pacific Coast, thence to Santa Barbara, San Miguel Mission, and San Francisco.

The Southern Pacific Railroad Company referred to in the eighteenth section of the act of July 27, 1866, was incorporated under the laws of the State of California on the twenty-ninth day of November, 1865. The charter of the corporation provided for the building of "a railroad from some point on the bay of San Francisco in the State of California, and to pass through the counties of Santa

Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego, to the town of San Diego in said State, thence eastward through the said county of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad from said eastern line of the State of California to the Mississippi river."

Under this charter the Southern Pacific Company, on the third day of January, 1867, filed in the Interior Department at Washington a plat of preliminary survey showing a line of projected railroad from San Francisco to the Colorado river, with the request that the lands indicated be withdrawn from market. Thereafter, on March 19, 1867, the Secretary of the Interior directed the Commissioner of the General Land Office to issue instructions to the local land offices in California to withhold the odd-numbered sections within the granted limits of twenty miles on each side of the road, as shown on the map, and also withdraw the odd-numbered sections outside of the twenty miles and within thirty miles on each side of the road, from which the indemnity for lands disposed of within the granted limits were to be taken. These instructions were carried out by the Commissioner of the General Land Office under date of March 22, 1867. The right of the Southern Pacific Railroad Company to have this withdrawal made for its benefit was, however, further considered by the Secretary of the Interior, and on July 14, 1868, he addressed a communication to the Commissioner of the General Land Office in which he revoked the order of withdrawal contained in his letter of March 19, 1867, having determined that the map filed by the Southern Pacific Railroad Company was upon a route

not authorized by the charter of the company, the laws of California, or contemplated by the act of Congress. This revocation was afterward in part suspended, but finally adhered to by the Secretary of the Interior in a letter addressed to the Comissioner of the General Land Office under date of November 2, 1869. Thereupon the Southern Pacific Company procured the passage of an act of the Legislature of California, approved April 4, 1870 (Stats. of California 1869-70, p. 883), authorizing the company to change the line of its railroad so as to reach the eastern boundary line of the State of California by such route as the company should determine to be the most practicable, and to file new and amendatory articles of association. The act further authorized the company to accept such grants as had been or might thereafter be made by Congress.

On June 28, 1870, Congress passed a joint resolution (16 Stats. at Large, 382), by which the Southern Pacific Company was authorized to construct its road as near as might be on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, 1867. It was further provided that as each section of the road should be constructed, patents to lands should issue to the extent and amount granted to said company by said act of July 27, 1866, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act. Pursuant to this resolution the order of withdrawal of lands within the granted limits, as made by the Secretary of the Interior on March 19, 1867 (the revocation of which had

been suspended pending action on the part of Congress), was renewed and carried into effect by the Commissioner of the General Land Office under date of July 29, 1870. Under the authority of the joint resolution of Congress of June 28, 1870, the Southern Pacific Company constructed that part of the railroad from Mojave to The Needles on the Colorado river, in the year 1885, and at that time filed in the Interior Department, in sections, its map showing the line of route as so constructed and located by the company, and the land grant to the company was adjusted upon those maps of constructed road. This road from Mojave to The Needles is known as the Southern Pacific "main line grant." The grant to the Southern Pacific Railroad Company by the joint resolution of June 28, 1870, overlapped the lands withdrawn under the grant to the Atlantic & Pacific made by the act of July 27, 1866, from a point near Mojave to the Colorado river, and those lands are a part of the lands in suit here.

On March 3, 1871, Congress passed an act entitled, "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes" (16 Stat. 573). The twenty-third section of this act provided: "That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions, and conditions as were granted

to said Southern Pacific Railroad Company of California by the act of July twenty-seven, eighteen hundred and sixty-six: Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company or any other railroad company." The Southern Pacific Company filed its map of general route under this act of March 3, 1871, from Mojave via Los Angeles to Yuma, on April 3, 1871, and thereafter as the road was constructed, filed its map of road, so constructed and located, in five sections, during the years from 1874 to 1878 inclusive. This grant to the Southern Pacific Company from Mojave via Los Angeles to Yuma is known as the "branch line grant," and overlaps the lands withdrawn under the grant to the Atlantic & Pacific, and those lands are a part of the lands in controversy here.

The Atlantic & Pacific Railroad Company failed to complete its road as required by the act of July 27, 1866, and in the year 1886 had failed to construct any railroad on its line west of the Colorado river. Thereupon Congress passed the act of July 6, 1886 (24 Stats. at Large, 123), forfeiting the lands granted to the Atlantic & Pacific Railroad Company adjacent to and coterminous with the uncompleted portions of the main line of said road embraced within both the granted and the indemnity limits, as contemplated to be constructed under and by the provisions of said act of July 27, 1866, and acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph line, and the lands were declared forfeited and restored to the public domain.

The act of March 3, 1887 (24 Stats. at Large, 556), entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes," provided for the immediate adjustment of all railroad land grants made by Congress, and upon the completion of such adjustment, if it should appear that lands had been from any cause erroneously certified or patented by the United States to or for the use or benefit of any company claiming by, through, or under grant from the United States to aid in the construction of a railroad, it was made the duty of the Secretary of the Interior to demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company should neglect or fail to so reconvey such lands to the United States within ninety days after such demand, it should thereupon be the duty of the attorney-general to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certificates, or other evidence of title theretofore issued for such lands, and to restore the title thereof to the United States.

The act of Congress approved March 2, 1896 (29 Stats. at Large, 42), provided for the extension of the time within which suits might be brought to vacate and annul land patents, and provided that no patent to any lands held by a bona fide purchaser should be vacated or annulled, but the right and title of such purchaser was by the act confirmed.

The present action was commenced in the Southern

District of California, on the fourteenth day of May, 1894. The bill of complaint alleged, among other things, that the plaintiffs are the absolute owners by title in fee simple, and are in the possession of the lands described in an exhibit marked "A" attached to the bill of complaint; that the officers of the Interior Department have erroneously and without any authority of law, caused to be issued to the defendant, the Southern Pacific Railroad Company patents of the United States in due form of law for the tracts of land described in Exhibit "A." The prayer of the bill is that the title of the plaintiffs to the lands described in Exhibit "A" be quieted; that the patents be vacated and decreed to be void, and that the defendants and each of them be forever enjoined from asserting or claiming any right or title to said lands adverse to the plaintiffs, and that the defendants be forever enjoined from chopping down or carrying away any wood, trees, or timber upon said lands, and from removing any minerals or other valuable deposits thereon.

The bill also includes the unpatented lands within the granted and indemnity limits of the Atlantic & Pacific Railroad Company in California, and alleges that maps of definite location, designating that part of the line, were filed by the company in the General Land Office in the year 1872; that as said plats or maps were filed in the Interior Department they were each then approved by the Secretary of the Interior, and upon the filing of such maps or plats the United States withdrew from market and reserved all the odd-numbered sections of land in California within thirty (30) miles of said line of route, and in pursuance of orders of the Secretary of the Inter-

ior and Commissioner of the General Land Office, the withdrawal and reservation of said lands were then made of record in the General Land Office and United States District Land Offices; that the Atlantic & Pacific Railroad Company did not, within the time or manner required by the act of July 27, 1866, or at all, construct or complete any railroad or telegraph line in whole or in part within the State of California, and by the act of Congress approved July 6, 1886 (24 Stats. at Large, 123) all lands and rights to lands granted to and conferred upon said Atlantic & Pacific Railroad Company and situated within the State of California, were forfeited and returned to the United States, and said lands were restored to the public domain, including all the odd-numbered sections of land for thirty (30) miles on each side of the line of route of said Atlantic & Pacific Railroad Company between the eastern boundary of California and the Pacific Ocean at San Buenaventura.

The bill alleges that the defendant, the Southern Pacific Railroad Company claims that a line of railroad and telegraph from Tehachapi Pass by way of Los Angeles to the Colorado river, had been constructed by the defendant within the time and in the manner provided by the act of Congress approved March 3, 1871 (16 Stats. at Large, 573); that the company accepted said grant and in the year 1874 designated its line by a plat thereof filed in the office of the Commissioner of the General Land Office, and the defendants claim that the lands described in the act were granted to said company by said act, but it is alleged that none of said lands were granted to the Southern Pacific Railroad Company or to any of the other

defendants by said act of Congress; that on the contrary, they were lands reserved and otherwise claimed, and are still owned by the United States. It is further alleged that the defendants, and each of them, claim some interest in said lands under and by virtue of said act of March 3, 1871, and not otherwise. With respect to these lands claimed by the defendants, and for which patents had not been issued, the prayer of the bill is that the Court will define and determine the rights of the plaintiffs to the odd-numbered sections of land in California within the thirty-mile limits of the line of route of the Atlantic & Pacific Railroad Company, as shown by the maps of said company on file and of record in the General Land Office, and will decree that the United States are the owners in fee of said lands as against all rights and claims of the defendants based upon or through said grants made by the United States by said acts of Congress approved July 27, 1866, and March 3, 1871, except the lands embraced in pending suits against the defendants.

The plaintiffs, on May 21, 1894, filed an amendment to their bill praying that their rights and title to the lands within the granted and indemnity limits of the Atlantic & Pacific Railroad Company be quieted, and the defendants perpetually enjoined from having or claiming any right, title, or interest in or to said lands, from, through, or under the acts of Congress approved July 27, 1866 (14 Stats. at Large, 492), or March 3, 1871 (16 Stats. at Large, 573), or joint resolution of Congress approved June 28, 1870 (16 Stats. at Large, 382), for which it is alleged patents have been erroneously issued to the Southern Pacific Railroad Company.

The lands described in Exhibit "A" amount to 29,914.24 acres. The United States attorney, on January 7, 1898, dismissed the cause of action as to certain lands described in Exhibit "A," amounting to 27,040.40 acres, leaving the action to proceed against 2,873.84 acres described in that exhibit. An examination of the record discloses the fact, however, that with the exception of two tracts of 160 acres each, these remaining lands described in Exhibit "A" are not properly involved in this action; that is to say, a number of the tracts described are clearly outside the limits of the Atlantic & Pacific grant, while other tracts are involved in another suit.

The remaining lands involved in this action as being within the granted and indemnity limits of the Atlantic & Pacific Railroad Company, and for which no patents have yet been issued, amount to about three millions of acres.

The answer of the defendants denies plaintiffs' ownership and possession of the lands described in Exhibit "A"; denies that the Atlantic & Pacific Railroad Company filed maps of definite location, designating parts of its line in the State of California, in the General Land Office in the year 1872, or at any time or at all; denies that as said plates or maps were so filed in the Interior Department they were each then approved by the Secretary of the Interior; denies that upon the filing of such maps or plats the United States withdrew from market and reserved all or any of the odd-numbered sections of land in California within thirty miles of the line of route, or that in pursuance of orders of the Secretary of the Interior, and the Commissioner of the General Land Of-

fice, the withdrawal or reservation of said lands was made then of record in the General Land Office and the United States District Land Offices in California by proper plats, documents and maps, or in any manner or at all; denies that any lands in suit herein fell within the thirty-mile limits of any such line, or were ever withdrawn from market or reserved for or for the benefit of said Atlantic & Pacific Railroad Company. The answer further recites the proceedings relating to the location of the route of the Atlantic & Pacific Railroad Company in California, and alleges that the location or designation of the route was upon an unauthorized and impracticable line, and that the maps filed by the company were fraudulent, spurious, and manufactured, and deceived the officers of the government. The answer also recites the facts relating to defendants' claim to the lands in question, and the execution of certain mortgages to the other defendants in the action covering such lands to secure the payment of certain mortgage bonds.

The decree in the Court below was in favor of the plaintiffs, adjudging that the United States are the owners by title in fee simple, absolute, unencumbered, of all the lands described in the decree, and that all patents issued by the United States to the defendant the Southern Pacific Railroad Company to or for any of said lands are null and void, and by the decree such patents are vacated, and the defendants forever enjoined and restrained from having or claiming any right, title, interest or lien in or to any of said lands, and the title of the United States to said lands is quieted. The lands described are "all the sections and parts of sections of land in the State of Cali-

fornia, surveyed and unsurveyed, designated by odd numbers, within thirty miles on each side of the line of route of the Atlantic & Pacific Railroad Company from the Colorado river to the Pacific Ocean at or near San Buenaventura, California, and co-terminous with said line of route, as designated and established by the maps filed by said Atlantic & Pacific Railroad Company in the General Land Office and in the Department of the Interior in the year one thousand eight hundred and seventy-two, copies of which were introduced in evidence in this cause and are now on file herein, to which maps, designating said line of route, reference is hereby made; excepting, however, from the lands so described, and from the operation of this decree, the following specific tracts of land which are not embraced by this suit." The lands excepted are those mentioned in the bill as being involved in other suits; the lands described in the order of dismissal entered upon the motion of the United States on January 7, 1898, and also certain lands which it was adjudged were, prior to the commencement of the suit, sold by the defendant the Southern Pacific Railroad Company to third persons, who purchased the same in good faith and for value, and as to such lands the Court holding that the act of Congress approved March 2, 1896 (29 Stats. at Large, 42), confirmed the sale of such lands to the purchasers, whether such patents were issued prior to the institution of the suit or subsequent thereto, for lands for which a contract of sale had been entered into in good faith and for value between the railroad company and the purchaser. (United States v. Southern Pacific Railroad Co., 86 Fed. 962.) Both parties have appealed from the decree.

Wm. Singer, Jr., attorney for the Southern Pacific Railroad Company et al.; Wm. F. Herrin, of counsel.

Joseph H. Call, Special United States Attorney.

Before GILBERT and MORROW, Circuit Judges, and HAWLEY, District Judge.

MORROW, Circuit Judge, after stating the case, delivered the opinion of the Court.

The appeal of the Southern Pacific Railroad Company (Case No. 494) will first be considered. It will be convenient to designate the parties plaintiffs and defendants, as they were in the Court below.

It is contended on the part of the plaintiffs that all the questions involved in the present case with respect to the lands in controversy, have been considered in other cases and determined, and having passed to final judgment, are now res judicata.

This was the principal question before the Supreme Court in Southern Pacific Railroad Company v. United States, 168 U. S. 1. It was there contended on behalf of the United States, that the lands in dispute in that case were in the same category in every respect with those in controversy in United States v. Southern Pacific Railroad, 146 U. S. 570, and United States v. Colton Marble & Lime Co., and United States v. Southern Pacific Railroad, 146 U. S. 615, and that so far as the question of title was concerned, the judgment in those cases had conclusively determined, as between the United States and the Southern Pacific Railroad Company and its privies, the essen-

tial facts upon which the government rested its claim in the case then before the Court. In support of this position it was insisted on the part of the United States that in the former cases the controlling matter in issue was whether certain maps filed by the Atlantic & Pacific Railroad Company in 1872, and which were accepted by the Land Department as sufficiently designating that company's line of road under the act of Congress of July 27, 1866, were valid maps of definite location, the United States contending in those cases that they were, and the Southern Pacific Company contending that they were not maps of that character, and that issue having been determined in favor of the United States and the lands in dispute in the case then before the Court being within the limits of the line of road so designated, it was not open to the Southern Pacific Railroad Company to question the former determination that such maps sufficiently identified the lands granted to the Atlantic & Pacific Railroad Company by the act of 1866, and were therefore valid maps. The defendants, on the other hand, contended in the later case that the decrees in the former cases decided by the Supreme Court were not conclusive in favor of the United States, either as res judicata or as estoppel or as evidence, for the reason that the case then before the Court presented new questions of law arising upon new and different facts. To determine this controversy it became necessary for the Supreme Court to ascertain what was in issue and what was determined in the former cases. The Court accordingly reviewed the previous litigation between the parties, considered the issues presented by the pleadings, the fact that the lands

involved in those suits were within the overlapping limits of the two grants, and determined the scope of the former adjudications. The Court then proceeds to consider the questions involved in the case under consideration, and, referring to the lands in controversy, classifies them as follows:

"It may be said that the lands here in dispute belong to one or the other of the following classes: Lands within the common granted limits of both the Atlantic & Pacific grant of 1866 and the Southern Pacific grant of 1871; lands within the granted limits of the Southern Pacific grant and the indemnity limits of the Atlantic & Pacific grant; lands within the Southern Pacific indemnity limits and the Atlantic & Pacific granted limits; lands within the common indemnity limits of both grants. Of those in dispute, 219,012.93 acres have not been surveyed by the United States. But all the lands now in dispute are within the limits of the grant to the Atlantic & Pacific Railroad Company, if the maps filed by that company in 1872, and which were approved by the Land Department, are to be regarded as maps of definite location." (168 U. S. 47.)

The lands here classified by the Court embrace all the different classes of lands within the overlapping limits of the Atlantic & Pacific grant of July 27, 1866, and the Southern Pacific grant of March 3, 1871, but no special consideration appears to have been given to this fact. The controlling fact appears to have been that all the lands in dispute were within the limits of the grant to the Atlantic & Pacific Railroad Company, and this fact left but one other question to be determined—and that

was, the validity of the maps of definite location filed by the Atlantic & Pacific Railroad Company. This question is disposed of by the Court in the following comprehensive language:

"It was distinctly adjudged, in the former cases, as between the Government and the Southern Pacific Railroad Company, 146 U. S. 570, 596, that the maps filed in 1872 sufficiently identified the lands granted to the Atlantic and Pacific Railroad Company on the contemplated line between the Colorado river and San Buenaventura on the Pacific Coast, although, for want of authority in that company to construct a railroad to San Francisco, they did not secure to the company any lands north of San Buenaventura; that is, those maps were directly adjudged to be maps adequately fixing or locating the line of the road under the act of 1866. The records of those cases having been introduced in the present suit, there is no room for doubt—if those records are competent evidence—as to what was in issue and what was adjudged in the former cases. The maps which in this case are relied upon by the United States as maps of definite location, and which the Southern Pacific Railroad Company denies to be of that character, are the identical maps which the Government relied on in the former cases, and the same which that company referred to and made part of its answer in the former litigation, and which were adjudged by this Court, in conformity with the contention of the Government, to be valid maps of definite location, the acceptance of which made it impossible for the Southern Pacific Railroad Company to acquire any interest in any lands granted to the Atlantic and Pacific Railroad Company

that were forfeited to the United States by the act of 1886."

The Court then proceeds to consider the effect of this adjudication upon the matter in issue under the pleadings in the case before the Court, and arrives at the conclusion that it must be taken to have been conclusively adjudicated in the former cases as between the United States and the Southern Pacific Company:

"1. That the maps filed by the Atlantic & Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to that company by the act of 1866.

"2. That upon the acceptance of those maps by the Land Department, the rights of that company in the lands so granted, attached, by relation, as of the date of the act of 1866; and

"3. That in view of the conditions attached to the grant, and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the forfeiture act of 1886, the property of the United States, and by force of that act were restored to the public domain, without the Southern Pacific Railroad Company having acquired any interest therein that affected the power of the United States to forfeit and restore them to the public domain.

"These grounds being accepted as the basis of our decision, the law in the present case is clearly for the United States; for, as all the lands here in controversy are embraced by the maps of 1872, and, therefore, appertain to the line located by such maps, it must be, for the reasons stated in the former decision, that the United States is

entitled, as between it and the Southern Pacific Railroad Company, to the relief given by the decree below."

In the present case the pleadings disclose substantially the same issues as were in controversy in the former cases, and they are all supported by practically the same evidence, but the defendants seek to distinguish this case from all the previous cases by the fact that a classification of the lands embraced within the limits of the overlapping grant to the Atlantic & Pacific Railroad Company and the grants to the Southern Pacific Railroad Company will show that the lands in controversy in this cases are not of the particular classes involved in any of the former cases. Upon this fact it is claimed that the rights pertaining to such lands have not been determined. This distinction is based largely upon the fact that the greater portion of the lands involved in this case are claimed by the Southern Pacific Railroad Company under what is called its "main line grant," for that part of its road from Mojave to The Needles, on the Colorado river, while in the former suits the claim of the Southern Pacific Railroad Company to the lands in dispute was under what is called its "branch line grant" for that part of its road from Mojave via Los Angeles to Yuma on the Colorado river. The classification of the lands of the overlapping grants under which this claim is made may be stated as follows:

1. Lands within the primary limits of the Atlantic & Pacific grant, and also within the primary limits of the Southern Pacific "main line grant."

2. Lands within the primary limits of the Atlantic &

Pacific grant, and also within the indemnity limits of the Southern Pacific "main line grant."

3. Lands within the indemnity limits of the Atlantic & Pacific grant, and also within the primary limits of the Southern Pacific "main line grant."

4. Lands within the indemnity limits of the Atlantic & Pacific grant, and also within the indemnity limits of the Southern Pacific "main line grant."

5. Lands within the primary limits of the Atlantic & Pacific grant, and also within the primary limits of the Southern Pacific "branch line grant."

6. Lands within the primary limits of the Atlantic & Pacific grant, and also within the indemnity limits of the Southern Pacific "branch line grant."

7. Lands within the indemnity limits of the Atlantic & Pacific grant, and also within the primary limits of the Southern Pacific "branch line grant."

8. Lands within the indemnity limits of the Atlantic & Pacific grant, and also within the indemnity limits of the Southern Pacific "branch line grant."

This method of classification might be further extended by considering the Southern Pacific main line and branch line grants as overlapping each other within both primary and indemnity limits, and in such relations conflicting with both the primary and indemnity limits of the Atlantic & Pacific grant.

If now we classify the lands involved in the various cases that have been tried and determined, we have the following result: In United States v. The Colton Marble & Lime Co., 146 U. S. 615 (No. 88 in the Circuit Court), the land in controversy was within the indemnity limits of

the Atlantic & Pacific grant and the primary limits of the Southern Pacific branch line grant. In United States v. The Southern Pacific Railroad Company, 146 U. S. 615 (Nos. 67, 68, and 69, consolidated as No. 68 in the Circuit Court), the land was within the indemnity limits of the Atlantic & Pacific grant and the primary limits of the Southern Pacific branch line grant. In United States v. The Southern Pacific Railroad Company, 146 U. S. 570 (No. 178 in the Circuit Court), the land was within the primary limits of the Atlantic & Pacific grant and within the primary limits of the Southern Pacific branch line grant. In United States v. The Southern Pacific Railroad Company, 146 U. S. 570 (No. 177 in the Circuit Court), the land was within the primary limits of the Atlantic & Pacific grant and within the primary limits of the Southern Pacific branch line grant. In United States v. The Southern Pacific Railroad Company, 168 U. S. 1 (No. 184 in the Circuit Court), the lands were within the primary limits of the Atlantic & Pacific grant, and within the primary limits of the Southern Pacific branch line grant. There were also lands within the primary limits of the Atlantic & Pacific grant and the indemnity limits of the Southern Pacific branch line grant; and in addition to these lands there were lands within the primary limits of the Atlantic & Pacific grant and the indemnity limits of the Southern Pacific main line grant.

It will be observed that the lands involved in these various suits embraced all the four classifications of land in conflict between the Atlantic & Pacific grant and the Southern Pacific branch line grant, and that in the last case there is a classification of land in conflict between

the Atlantic & Pacific grant and the Southern Pacific main line grant.

The defendants contend that while in the previous cases between these parties lands were in controversy embraced in all the possible classifications of conflict between the grants, except three, nevertheless these three are in the main line grant of the Southern Pacific, having rights under the statutes which distinguish them from all the other lands heretofore in dispute. The defendants contend further that with respect to the lands in the last case (168 U. S. 1) found to be in conflict between the Atlantic & Pacific grant and the Southern Pacific main line grant, this conflict was not observed when the case was tried in the Court below, and was not noticed by the Supreme Court; and that with respect to lands lying within the indemnity limits of the Southern Pacific branch line grant, the right of the Southern Pacific to such lands was not considered or discussed in any of the previous cases.

The controversy with respect to the lands in suit in this case may now be stated as follows: The plaintiffs contend that there is no question to be decided by a classification of the lands in dispute; that all the lands involved were granted to the Atlantic & Pacific Railroad Company by the act of July 27, 1866; that the company failed to build a road west of the Colorado river; that by the forfeiture act of July 6, 1886, Congress restored the lands within the limits of the grant to the absolute ownership of the United States, without any right or title having attached to any of the lands under either of the grants to the Southern Pacific Company; that in any event these lands

were all excepted and reserved from the Southern Pacific's grants, because withdrawn for the benefit of the Atlantic & Pacific Railroad Company prior to the several dates the Southern Pacific definitely located its railroads, and that the plaintiffs' claim in this respect has been determined in the prior cases mentioned, and is res judicata.

The defendants claim that the lands in conflict within the limits of the Southern Pacific's main line grant were granted the Southern Pacific by section 18 of the act of July 27, 1866 (14 Stat. 292), and the Joint Resolution of June 28, 1870 (16 Stat. 382); that, in any event, the said act and joint resolution of Congress granted the Southern Pacific an equal, undivided moiety interest in all conflict lands within the limits of its main line grant, and that defendants' claim in this respect has not been determined, but is open for adjudication.

The defendants admit that, on the principle of priority of title with priority of granting act, the Atlantic & Pacific grant defeats the Southern Pacific's right and title to all conflict lands within the primary limits of the Southern Pacific's branch line grant, and that this question has been so determined in prior litigation. But the defendants claim that the Southern Pacific is entitled to select and receive patents for lands lying within the indemnity limits of either its branch line or main line grants and within the limits of the Atlantic & Pacific grant, such lands having been restored to their original status as public lands, and therefore subject to such selection by the forfeiture act of July 6, 1886.

It is obvious that the first and most important inquiry is as to the right acquired by the Southern Pacific Company under the act of July 27, 1866, to the lands west of the Colorado river. The grant was in praesenti, and if, upon the definite location and construction of the Southern Pacific Railroad in 1885 from Mojave to a point on the Colorado river, where it connected with the Atlantic & Pacific Railroad, the odd-numbered sections of land along that line passed to the Southern Pacific Company under section 18 of the act of July 27, 1866, as of that date, then the Atlantic & Pacific acquired no interest in that part of the grant, and the act of July 6, 1886, forfeiting the lands granted to that company adjacent to and coterminous with the uncompleted portions of the line of its track, did not affect any lands west of the Colorado river, and gave to the United States no right to assert any claim to such lands under the forfeiture act. This aspect of the case was necessarily involved in any controversy concerning whatever right the Atlantic & Pacific Company may have had in the lands in question. In other words, the claim of the Southern Pacific Company to any lands within the disputed territory of the Atlantic & Pacific grant west of the Colorado river compelled the United States to put in issue the entire title of the latter company to the lands within that territory. In the several cases that have been tried and determined between the parties, the United States have been the plaintiff's and have had the burden of presenting a clear title in support of the various actions. Hence we find the decisions of the Courts upon the issues thus presented dealing with the title of the Atlantic & Pacific Company, and not the title

of the Southern Pacific Company. In the case of the Southern Pacific Railroad Company v. United States, 168 U. S. 1, the Supreme Court makes this very plain when, after a review of all the questions involved in previous cases, it holds as a determination of the controversy that the maps filed by the Atlantic & Pacific Railroad Company in 1872 were sufficient as maps of definite location to identify the lands granted to that company by the act of July 27, 1866; that upon the acceptance of those maps by the Land Department, the rights of that company in the lands so granted attached by relation as of the date of that act, and that in view of the conditions attached to the grant and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the act of July 6, 1886, forfeiting the lands granted to the Atlantic & Pacific Railroad Company, the property of the United States, and by force of that act were restored to the public domain, without the Southern Pacific Railroad Company having acquired any interest therein that affected the ownership of the United States. This declaration of the Court as to the character of the title held by the United States as against any claim asserted by the Southern Pacific Company is but a restatement of what was said in United States v. Southern Pacific Railroad Company, 146 U. S. 570, 598. It was there said: "Congress intends no scramble between companies for the grasping of titles by priority of location, but that it is to be regarded as though title passes as of the date of the act, and to the company having priority of grant, and, therefore, that in the eye of the law it is now as

though there never was a period of time during which any title to these lands was in the Southern Pacific."

It is no answer, therefore, to the claim of title presented by the United States in this case under the Atlantic & Pacific grant and its forfeiture by Congress, for the Southern Pacific Company to say that previous adjudications cannot be considered because it has a better title to the lands involved in this case than it had before in the other cases. The primary question is not what claim of title the Southern Pacific Company has to these lands, but what title the Atlantic & Pacific Company had to which the United States have succeeded, and upon which they now rest their claim of right. The plaintiffs present this title and the evidence in its support, and say upon this evidence in previous litigation between these parties this title has been declared to be valid, and under it the United States hold all the lands in dispute by title in fee simple absolute and unencumbered. Is not that sufficient, and the adjudication conclusive upon the questions at issue in the present case?

In Southern Pacific Railroad v. United States, 168 U. S. 1, the Court said: "The maps which in this case are relied upon by the United States as maps of definite location, and which the Southern Pacific Railroad Company denies to be of that character, are the identical maps which the Government relied on in the former cases, and the same which that company referred to and made part of its answer in the former litigation, and which were adjudged by this Court, in conformity with the contention of the Government, to be valid maps of definite location, the acceptance of which made it impossible for the Southern

Pacific Railroad Company to acquire any interest in any lands granted to the Atlantic & Pacific Railroad Company that were forfeited to the United States by the act of 1886."

The effect of this adjudication upon the title of the plaintiffs is thus explained by the Court: "The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue and directly determined by a Court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of person and property if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them." Further on the Court applies this rule to the claim of the United States for the lands embraced by the maps of 1872. The Court says: "Even if we were prepared, upon a re-examination of the former cases, or upon the showing made by the present record, to hold that the maps of 1872 were not valid maps of definite location, we

could not for that reason, in this proceeding, go behind the former adjudication, and deny to the United States the benefit of the rule making that adjudication, so long as it was unmodified, conclusive, as between the parties to it, of all matters actually determined under the issues in the prior suits."

The scope of these decisions of the Supreme Court cannot be mistaken. They were intended to dispose of all the questions in issue and make it perfectly clear that all the lands embraced within the primary and indemnity limits of the Atlantic & Pacific grant between the Colorado river and San Buenaventura had been forfeited to the United States and restored to the public domain free from any claim whatever on the part of the Southern Pacific Railroad Company, and these decisions have been placed upon grounds that leave no room for the consideration of a claim of title based upon the theory that the Southern Pacific Company had acquired a right to the lands contemporaneously with the Atlantic & Pacific Company under section 18 of the act of July 27, 1866. The Southern Pacific Railroad Company referred to in that section was at that time authorized by its charter to build a railroad from San Francisco through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego, to the town of San Diego, and thence eastward through the county of San Diego to the eastern line of the State, but that is a very different line of road from the one down the San Joaquin Valley through the Tehachapi Pass to Mojave, and thence eastward to The Needles on the Colorado river, the authority for the building of which under its charter was not ob-

tained from the legislature of the State until April 4, 1870, and was not authorized by Congress until June 28, 1870; and then the resolution of Congress granting the authority expressly provided for the saving and reserving of all the rights of actual settlers, together with the other conditions and resolutions provided for in the third section of the act of July 27, 1866. Among the other conditions and restrictions contained in that section was the provision that the lands granted were those to which the United States had full title, and not reserved, sold, granted or otherwise appropriated. What effect this resolution had upon the original grant to the Atlantic & Pacific Company is not now open for consideration. The question was before the Court in the cases that have been determined, together with all the facts relating to the claim of the Southern Pacific Company to the grant of land between Mojave and the Colorado river, and was part of the case against plaintiff's title under the grant.

It follows that the claim now made that in any event the two companies take the lands within the conflicting lines in equal, undivided moities, must be considered as having been adjudicated and determined adversely to the claim of the Southern Pacific Company.

Nor is there any room for the consideration of a claim of title based upon any supposed rights arising out of a classification of lands under the different grants to the Southern Pacific Company. It appears, however, that lands claimed as belonging to the main line grant to that company were in fact involved in the case of the Southern Pacific Railroad Company v. United States, 168 U. S. 1, and in a petition to the Supreme Court for a rehearing of

the case that fact was pressed upon the attention of the Court as distinguishing that case from the former cases and calling for a different decree. But the Court evidently considered that the fact was sufficiently covered by the decision, and refused a rehearing. That question must therefore be considered as having been determined, and is now res judicata. The same disposition must be made of the claim that the right of the Southern Pacific Company to select lands within the indemnity limits is dependent upon the status of the land at the date of selection, and not at the date of the grant, and that when the forfeiture act restored the lands of the Atlantic & Pacific grant to the public domain, they became subject to selection by the Southern Pacific Company as indemnity for loss of land within the primary limits.

This question was before the Court in all the cases that have been determined, and the claim of the Southern Pacific Company to lands within the indemnity limits of the Atlantic & Pacific grant has been considered and denied in all of them; and if, as the Supreme Court said in United States v. Southern Pacific Railroad Company, 146 U. S. 570, 598, "In the eye of the law it is now as though there never was a period of time during which any title to these lands was in the Southern Pacific," it is difficult to see how the Southern Pacific Company has sustained any loss of lands within the primary limits of its main line grant on account of the grant to the Atlantic & Pacific Company for which it may claim an indemnity out of the indemnity limits of the latter. If the Southern Pacific Company never had any right or title to lands within the grant to the Atlantic & Pacific Company, then it never

had any land in that territory to lose. This was one of the conditions and restrictions contained in section three of the act of July 27, 1866, and imposed upon the Southern Pacific Company by the joint resolution of Congress of June 28, 1870. It was expressly provided by section three that if the route of the Atlantic & Pacific grant be found upon the line of any other railroad route to aid in the construction of which lands had theretofore been granted by the United States as far as the routes were upon the same general line, the amount of land theretofore granted should be deducted from the amount granted by that act. The main line of the Southern Pacific having been located upon the same general line as that of the Atlantic & Pacific Company between The Needles and Mojave, it follows that the Southern Pacific Company has lost nothing upon that route. The law does not contemplate an indemnity for a loss which has never been sustained, and we think that the Supreme Court has so determined, and the controversy has been closed.

In The United States v. Colton Marble & Lime Co., 146 U. S. 615, the Supreme Court had before it the claim of the Southern Pacific Company's branch line for lands within the indemnity limits of the Atlantic & Pacific grant. In disposing of this claim the Court held that the proviso in the act of March 3, 1871 (16 Stats. 573), granting lands in aid of the construction of the Southern Pacific Railroad that the grant should "in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company," operated to exempt the indemnity lands of the Atlantic & Pacific Company from the grant to the Southern Pacific Company. This is

clearly a final adjudication upon the claim of indemnity for the Southern Pacific branch line, as that was the specific claim involved in the case, and leaves no question to be determined in the present case with respect to any claim of the Southern Pacific Company to lands within the indemnity limits of the Atlantic & Pacific grant.

The rights of the defendants other than the Southern Pacific Company, as mortgagees to secure the payment of certain mortgage bonds, have also been considered in the previous cases, and determined adversely to their claim.

The appeal of the United States in Case No. 495 raises the question as to the correctness of that part of the decree adjudging that certain lands therein described were, prior to the commencement of the suit, sold by the defendant the Southern Pacific Railroad Company to third persons who purchased the same in good faith for value, and as to which lands it is adjudged that the United States take nothing by the decree. The Court below held that by the act of Congress of March 2, 1896 (29 Stats. at Large, 42), supplementing the act of March 3, 1887 (24 Stats. at Large, 556), such of the lands described in the bill as had been patented by the authority of the United States to and were sold by the defendant railroad company for value and in good faith, were thereby confirmed to such persons, whether such patents were issued prior to the commencement of the suit or subsequent thereto. United States v. Southern Pacific R. R. Co., 86 Fed. 962.

The act of March 3, 1887, provided for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands. It required the Secretary of the Interior to immediately

adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads theretofore unadjusted, and if it should appear upon the completion of such adjustments respectively, or sooner, that the lands had been, from any cause, theretofore erroneously certified or patented by the United States to or for the use or benefit of any company claiming by, through or under grant from the United States, to aid in the construction of a railroad, it was made the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits, and if such company should neglect or fail to so reconvey such lands to the United States within ninety days after making the demand, then the Attorney-General was required to commence and prosecute in the proper Courts the necessary proceedings to cancel all patents, certificates or other evidence of title theretofore issued for such lands, and to restore the title thereof to the United States. The act also provided that as to such of the lands so erroneously certified or patented which had theretofore been sold by the grantee company to citizens of the United States, or to persons who had declared their intention to become such citizens, the person or persons so purchasing in good faith, and the heirs or assigns of such person or persons, should be entitled to the land so purchased upon making proof of the fact of such purchase at the proper land office, within such time and under such rules as should be prescribed by the Secretary of the Interior, after the respective grants should have been ad-

justed; and that patents of the United States should issue therefor, and should relate back to the date of the original certificate or patenting, and directing the Secretary of the Interior, on behalf of the United States, to demand payment from the company which had so disposed of such lands of an amount equal to the government price for similar lands; and in case of neglect or refusal of such company to make payment as specified in the act within ninety days after the demand, the Attorney-General was directed to cause suit or suits to be brought against such company for such amount, provided that nothing in the act should prevent any purchaser of lands erroneously withdrawn, certified, or patented, from recovering the purchase money therefor from the grantee company, less the amount paid to the United States by such company as by the act required.

The act of March 3, 1891 (26 Stats. at Large, 1093), provided that suits by the United States to vacate and annul any payment therefor issued should only be brought within five years from the passage of that act, and suits to vacate and annul patents thereafter issued should only be brought within six years after the date of the issuance of such patents.

The act of March 2, 1896 (29 Stats. at Large, 42), extended the time for bringing such suits, and provided, in section 1, that suits by the United States to vacate and annul any patent to lands therefor erroneously issued under a railroad or wagon-road grant, should only be brought within five years from the passage of that act, and suits to vacate and annul patents thereafter issued should only be brought within six years after the date of the issuance

of such patents. And it was further provided: "But no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed."

The question as to who are bona fide purchasers under this act was considered by the Supreme Court in United States v. Winona etc. R. R. Co., 165 U. S. 463, 477, and clearly described.

The Court said:

"Given a bona fide purchaser, his right and title is conferred, and no suit can be maintained at the instance of the government to disturb it."

The Court then proceeded to consider the question whether the holders of title in that case were bona fide purchasers, and said:

"It is earnestly contended by the government that the present holders of the title are not 'bona fide purchasers'; that that term has a fixed and well defined meaning as announced in the frequent decisions of this and other courts; that as said in 2 Pom. Eq. Jur., par. 745, 'The essential elements which constitute a bona fide purchaser are, therefore, three: a valuable consideration, the absence of notice, and presence of good faith.' United States v. California, etc. Land Co., 148 U. S. 31, 42; that while two of these essential elements may be found, to wit, a valuable consideration and the presence of good faith, the third, the absence of notice, is lacking; that all men are conclusively presumed to know the law and that as the true rule of construction in reference to these grants was laid down by this Court, the purchasers were bound to know such true rule; that the records of the

land office disclosed the existence of these homestead entries and pre-emption filings, and therefore they who purchased from the railroad company knew, or at least were chargeable with knowledge of the fact that those lands could not rightfully have been certified to the railroad company, but were excepted from the terms of grant, and in fact remained the property of the government. It is further insisted that as Congress in this statute used this well-understood expression, it intended only the protection of such parties as came within the scope of this settled meaning. It is said that the only cases to be covered by this provision were those in which the State or the railroad company, by presentation to the land office before the filing of the map of definite location of a forged relinquishment by the pre-emptor, or one having made a homestead entry, or by some other fraudulent representation, secured a certification or patent to the tracts, and thereafter sold and conveyed to one who purchased in ignorance of the fraud.

"We are unable to agree with this contention of counsel, for several reasons: In the first place, the situation as it was known to exist, makes against any such narrow construction. While instances of such fraudulent conduct on the part of the State to which the lands were certified, or the company to which the lands were patented, might exist, yet in the nature of things they would be few and hardly worth the special notice of Congress, while on the other hand, the fact that there had been a difference between the land department and the Courts, one construction obtaining in the former prior to the decisions by the latter, and the further fact that by this

difference of construction many tracts had been erroneously certified or patented, must have been well known to Congress, and naturally, therefore, a subject for its legislation. Further, there was no need of any legislation to protect a 'bona fide purchaser.' This had been settled by repeated decisions of this Court. United States vs. Burlington & Missouri River R. R. Co., 98 U. S. 334, 342; Colorado Coal Co. vs. United States, 123 U. S. 307, 313; reaffirmed in United States vs. California, etc. Land Co., 148 U. S. 31. For in each of those cases it was decided that although a patent was fraudulently and wrongfully obtained from the government, if the land conveyed was within the jurisdiction of the land department, the title of a bona fide purchaser from the patentee could not be disturbed by the government, so that this provision was absolutely unnecessary if that which is now claimed by counsel for the government is all that was intended by Congress. We do not mean to assert that because legislation to cover such a contingency was unnecessary, therefore the language used by Congress necessarily implies something other and different, because of course it may have been that Congress intended nothing but a simple declaration of the law as it was known to exist. At the same time, the fact that under one construction it was needless, raises a presumption that something more was intended, and that Congress had in view the protecton of other parties than were already protected by general law.

"But we need not rest on these inferences and presumptions. Other provisions of the acts of 1887 and 1896

make clear the intent of Congress. Section three of the act of 1887 provides that if the homestead or pre-emption entry of any bona fide settler has been erroneously canceled on account of any railroad grant, it may be reinstated, provided he has not located another claim, or made an entry in lieu of the one so canceled, and also did not voluntarily abandon such entry. By this section Congress provided for a reinstating of the title of one deprived thereof by an erroneous ruling of the Land Department, but at the same time limited the right of reinstating to cases in which the original entryman had not voluntarily abandoned his entry, or had not since that time made a new entry. In other words, it was limiting the restoration of the title of the original entryman to cases in which he had a continuing and present equitable right to recognition. As to all other cases, Congress reserved the determination of the equities between the government, the railroad company, and purchasers from the latter, and in subsequent sections it made provision for the adjustment of such equities.

"Section four of the same act, expressly referring to all other lands erroneously certified or patented to any railroad company, provides that citizens who had purchased such lands in good faith, should be entitled to the lands so purchased and to patents therefor issuing directly from the United States, and that the only remedy of the government should be an action against the railroad company for the government price of similar land. It will be observed that this protection is not granted to simply bona fide purchasers (using that term in the technical sense), but to those who have one of the ele-

ments declared to be essential to a bona fide purchaser, to wit, good faith. It matters not what constructive notice may be chargeable to such a purchaser, if in actual ignorance of any defect in the railroad company's title and in reliance of the action of the government in the apparent transfer of title by certification or patent, he has made an honest purchase of the lands. The plain intent of this section is to secure him the lands and to reinforce his defective title by a direct patent from the United States, and to leave to the government a simple claim for money against the railroad company. It will be observed that the technical term 'bona fide purchaser' is not found in this section, and while it is provided that a mortgage or pledge shall not be considered a sale so as to entitle the mortgagee or pledgee to the benefit of the act, it does secure to every one who in good faith has made an absolute purchase from a railroad company, protection to his title, irrespective of any errors or mistakes in the certification or patent.

"Section five of the same act applies to cases in which no certification or patent has issued, and yet the lands sold by the railroad company are the numbered sections prescribed in its grant, and co-terminous with the constructed portions of its road, and it is there provided that where the lands so sold by the company 'are for any reason excepted from the operation of the grant to said company,' the purchaser may obtain title directly from the government by paying to it the ordinary government price of such lands. It is true the term used here is 'bona fide purchaser,' but it is a bona fide purchaser from the company, and the description given of the land as

not conveyed and 'for any reason excepted from the operation of the grant,' indicates that the fact of notice of defect of title was not to be considered fatal to the right. Congress attempted to protect an honest transaction between a purchaser and a railroad company, even in the absence of a certification or patent. These being the provisions of the act of 1887, the act of 1896 confirming the right and title of a bona fide purchaser and providing that the patent to his lands should not be vacated or annulled, must be held to include one who, if not in the fullest sense a 'bona fide purchaser,' has nevertheless purchased in good faith from the railroad company."

Under this decision there is no question but that the purchasers from the railroad company in this case were bona fide purchasers, and are fully protected by the statute.

We are further of the opinion that the bill of complaint did not call for the cancellation of the patents for the lands described. The bill alleged that the officers of the Interior Department had erroneously and without any authority of law caused to be issued to the defendant Southern Pacific Railroad Company patents of the United States in due form of law, for the tracts of land described in plaintiffs' Exhibit "A" attached to the complaint. The prayer of the bill was that plaintiffs' title to the lands described in Exhibit "A" should be quieted, and that the pretended patents for said lands be vacated and decreed to be void, etc. The lands excepted from the decree as having been sold by the Southern Pacific Company to bona fide purchasers who purchased the same in good faith and for value, are not described in Ex-

hibit "A," and were not therefore properly involved in the suit for the cancellation of patents.

The decree of the Circuit Court is affirmed.

[Endorsed]: Opinion. Filed Oct. 2, 1899. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

October Term, 1899.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and THE CENTRAL TRUST COMPANY, of New York,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

No. 494.

Decree U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States for the Southern District of California.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of California, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said Circuit Court, in this cause be, and the same is hereby, affirmed.

[Endorsed]: Decree. Filed October 2, 1899. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

IN EQUITY.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and CENTRAL TRUST COMPANY of York,
Defendants and Appellants,
vs.
UNITED STATES OF AMERICA,
Complainant and Appellee.
} No. 494.

Assignment of Errors.

The above-named appellants, by the undersigned, their counsel and attorney, in connection with their petition on appeal herein, most respectfully show, that the decree of this Court herein is erroneous, and against their just rights, in the following particulars:

I.

This Court erred in deciding that the United States is the owner, by title in fee simple absolute, or the owner in anywise, of the lands, or any thereof, described in the affirmed decree of the Circuit Court as owned by the complainant; and in not adjudging that the complainant take nothing as to any of such lands. Because, as shown by the evidence:

First.—A large portion of the lands described in the affirmed decree of the Circuit Court as owned by the United States, are situated within the primary limits of the land grant made to the defendant Southern Pacific Railroad Company by the Act of Congress approved July 27, 1886 (Vol. 14 U. S. Stats., p. 292), and Joint Resolution of Congress approved June 28, 1870 (Vol. 16 U. S. Stats., p. 382), and are not embraced by any exception to the grant of lands thereby made; and defendant Southern Pacific Railroad Company duly constructed the railroad contemplated, and fully performed all the conditions imposed, by the said Act and Joint Resolution; and the railroad so constructed was duly accepted and approved by the proper officers of the United States. The defendants are, therefore, the owners by title in fee simple, absolute and indefeasible, of all the lands in this paragraph referred to.

Second.—Another large portion of the lands described in the affirmed decree of the Circuit Court as owned by the United States, are situated within the indemnity limits of the land grant made to the defendant Southern Pacific Railroad Company by the Act and Joint Resolution of Congress mentioned in the next preceding para-

graph, and are not embraced by any exception to the grant of lands thereby made; and all the odd-sections within the primary and indemnity limits of the land grant made to the defendant Southern Pacific Railroad Company, by the said Act and Joint Resolution, not finally disposed of by the United States prior to July 27, 1866, are insufficient to make or equal the amount of land thereby granted to the said defendant company. For these reasons, and the other reasons set forth in the next preceding paragraph, the defendants are also the owners by title in fee simple, absolute and indefeasible, of all the lands referred to in this paragraph.

Third.—Some of the lands referred to in the next preceding paragraphs were duly selected by the defendant Southern Pacific Railroad Company, under the direction of the Secretary of the Interior, as indemnity lands granted to it by the said Act and Joint Resolution. As to which selected lands the defendants are, for the reasons hereinbefore set forth, entitled to the issue of patents from the United States to the defendant Southern Pacific Railroad Company; and are also entitled to select, and receive patents for, all of the lands referred to in the "1st" and "2nd" paragraphs hereof, which remain unselected.

Fourth.—Another large portion of the lands described in the affirmed decree of the Circuit Court as owned by the United States, are situated within the indemnity limits of the land grant made to the defendant Southern Pacific Railroad Company by the Act of Congress approved March 3, 1871 (Vol. 16, U. S. Stats., p. 573), and are not embraced by any exception to the grant of land

thereby made; the said company duly constructed the railroad contemplated, and fully performed all the conditions imposed, by the last mentioned Act of Congress; the railroad so constructed was duly accepted and approved by the proper officers of the United States; and all the odd-sections, within the primary and indemnity limits of the land grant made to the defendant Southern Pacific Railroad Company by the said Act of March 3, 1871, are insufficient to make or equal the amount of lands thereby granted. The defendants are, therefore, the owners by title in fee simple, absolute and indefeasible, of all the lands in this paragraph referred to.

Fifth.—Some of the lands referred to in the next preceding paragraph were duly selected by the defendant Southern Pacific Railroad Company, under the direction of the Secretary of the Interior, as indemnity lands granted to it by the said Act of March 3, 1871. As to which selected lands the defendants are, for the reasons set forth in the fourth paragraph hereof, entitled to the issue of patents from the United States to the defendant the Southern Pacific Railroad Company; and are also entitled to select, and receive patents for, all the lands referred to in the fourth paragraph hereof, which remain unselected.

Sixth.—The defendants, D. O. Mills and Homer S. King, are trustees under a deed of trust duly executed on April 1, 1875, by the defendant Southern Pacific Railroad Company, and the defendant Central Trust Company of New York is the trustee under a deed of trust, executed on August 25, 1888; which deeds of trust conveyed all the lands described in the said decree as owned

by the United States, to secure the payment of, and out of the proceeds of the sale of the lands conveyed to redeem and pay, a large number of bonds issued and sold by the defendant Southern Pacific Railroad Company for several millions of dollars paid to it by numerous bona fide purchasers thereof, who still hold the bonds so purchased, unpaid. The said trustees are, therefore, bona fide purchasers of all the said lands so conveyed to them; and the defendants' title is expressly confirmed by the Act of March 2, 1896 (29 U. S. Stats., p. 42), to such of those lands as are covered by patents from the United States to the defendant Southern Pacific Railroad Company.

II.

This Court erred in deciding that any patents issued by the United States to the defendant Southern Pacific Railroad Company, for all, or any, of the lands described in the said decree as owned by the complainant, are, or should be, adjudged null, void or vacated; because, as shown by the evidence:

First.—Several of such patents are for lands referred to in the first paragraph of assignment I hereof, and were duly selected by the defendant Southern Pacific Railroad Company under the direction of the Secretary of the Interior, prior to the issue of such patents, as primary limits lands granted to the said company by the Act of July 27, 1866, and Joint Resolution of June 28, 1870, hereinbefore mentioned. For which reasons, and the other reasons set forth in the first paragraph of the said assignment I, such patents were duly and lawfully issued, and are valid.

Second.—Several other of such patents are for lands referred to in the second paragraph of assignment I hereof; and for the reasons set forth in the first, second and third paragraphs of the said assignment I, such patents were duly and lawfully issued, and are valid.

Third.—Several other of such patents are for lands referred to in the fifth paragraph of assignment I hereof; and for the reasons set forth in the fourth and fifth paragraphs of said assignment I, such patents were duly and lawfully issued and are valid.

Fourth.—All patents issued to the defendant Southern Pacific Railroad Company, and adjudged null, void, and vacated by the said decree are for lands held by the trustee defendants in trust for bona fide purchasers and holders of outstanding bonds, under the trust deeds hereinbefore set forth; and for the reasons given in the sixth paragraph of assignment I hereof, the said trustees are bona fide purchasers of the land subject of all the patents adjudged, null, void, and vacated by the said decree. Wherefore such patents, and the title of the trustee defendants to the lands thereof, are confirmed by the Act of Congress approved March 2, 1896 (29 U. S. Stats., p. 42); and all of such patents are valid.

Fifth.—This suit was dismissed on January 7, 1898, on motion of counsel for the United States, in so far as it was a suit to cancel patents issued to the defendant Southern Pacific Railroad Company.

III.

This Court erred in deciding that the defendants be enjoined or restrained from having or claiming any right,

title or interest in, or lien upon, any or all of the lands described in the affirmed decree of the Circuit Court as owned by the United States; for the reasons given in assignment I and II hereof, and the several paragraphs thereunder.

IV.

For the reasons hereinbefore assigned, this Court erred in deciding that the complainant have and recover its costs of suit herein; and in not adjudging that the defendants have and recover their costs.

Wherefore appellants pray that the decree of this Court be reversed, excepting in so far as in affirming the decree of the Circuit Court, it adjudges that the complainant take nothing; and that the said Circuit Court be directed to enter a decree dismissing the bill of complaint of the United States herein.

WM. SINGER, JR.,
Attorney for the defendants.

WM. F. HERRIN,
Counsel for the defendants.

[Endorsed]: No. 494. United States Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al. vs. United States of America. Assignment of Errors. Filed October 6th, 1899. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, Ninth Circuit.

IN EQUITY.

SOUTHERN PACIFIC RAILROAD COMPANY; D. O. MILLS and HOMER S. KING, Trustees, and CENTRAL TRUST COMPANY of New York,
Defendants and Appellants,
vs.
UNITED STATES OF AMERICA,
Complainant and Appellee.
} No. 494.

Petition for Appeal.

The above-named appellants, conceiving themselves aggrieved by the decree made and entered herein on October 2nd, 1899, appeal from the said decree to the United States Supreme Court, for the reasons specified in their assignment of errors filed herewith; and they pray that their appeal may be allowed, and that a true copy of the record, opinion of the Court, assignment of errors, and all proceedings in the cause, under the seal of this Court, and the hand of its clerk, be sent to the United States Supreme Court.

Your petitioners further pray that, upon giving a good and sufficient bond, to be approved by this Court, all pro-

ceedings in this cause, and upon said decree, may be stayed, pending their appeal.

Dated October 6, 1899.

WM. SINGER, JR.,
Attorney for the defendants.

WM. F. HERRIN,
Counsel for the defendants.

Order Allowing Appeal.

The foregoing claim of appeal, and prayer for supersedeas, are allowed and granted; the supersedeas to take effect upon the filing of a good and sufficient bond in the sum of three thousand dollars, conditioned that the defendants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

It is further ordered that a true copy of the record, opinion of the Court, assignment of errors, and all proceedings in the cause, under the seal of this Court and the hand of its clerk, be sent to the United States Supreme Court.

Dated Oct. 6, 1899.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: No. 494. United States Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al., vs. United States of America. Petition for, and Order of Appeal.

Filed October 6, 1899. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, Ninth Circuit.

IN EQUITY.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees; and CENTRAL TRUST COMPANY of New York,
Defendants and Appellants,
vs.
UNITED STATES OF AMERICA,
Complainant and Appellee.
} No. 494.

Bond on Appeal.

We, N. T. Smith and F. S. Douty, both residents of the county of San Mateo, State of California, are held and firmly bound to pay unto the United States of America, in the sum of three thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors and administrators, jointly and severally, firmly by these presents.

The above-named defendants have been allowed an appeal to the United States Supreme Court, and a supersedeas, from the decree entered in the above entitled Court and cause on October 2, 1899; and the condition of this obligation is, that if the defendants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this

obligation shall be void—otherwise to remain in full force.

Dated, signed and sealed on October 6, 1899.

N. T. SMITH. [Seal]

F. S. DOUTY. [Seal]

State of California,
City and County of San Francisco. } ss.

N. T. Smith and F. S. Douty being duly sworn, each for himself, says: I am one of the sureties on the foregoing bond, and subscribed my name thereto. I am a resident of and freeholder within the county of San Mateo, State of California, and am worth the sum of three thousand dollars, over and above all my just debts and liabilities, in property within the said county which is not exempt from execution.

N. T. SMITH.

F. S. DOUTY.

Subscribed and sworn to before me on October 6, 1899.

[Seal] E. B. RYAN,

Notary public in and for the city and county of San Francisco, State of California.

The foregoing bond is approved.

WILLIAM B. GILBERT,

Judge.

[Endorsed]: No. 494. United States Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al., vs. United States of America. Bond on Appeal.

Filed October 9, 1899. F. D. Monckton, Clerk.

At a stated term, to wit: the October term, A. D. 1899, of the United States Circuit Court of Appeals, for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the ninth day of October, in the year of our Lord one thousand eight hundred and ninety-nine. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES OF AMERICA,
Appellee.
No. 494.

Order Allowing Appeal to Supreme Court.

On motion of Wiliam Singer, Jr., Esq., counsel for the appellants in this cause, it is ordered that an appeal be, and hereby is, allowed the said appellants to the Supreme Court of the United States from the decree of this Court filed and entered herein on October 2, 1899; that the issue of mandate be, and hereby is, stayed until further order; that the bond this day filed by appellants is approved; and that appellants have citation.

At a stated term, to wit: the October term, A. D. 1899, of the United States Circuit Court of Appeals, for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Tuesday, the tenth day of October, in the year of our Lord one thousand eight hundred and ninety-nine. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES OF AMERICA,
Appellee.
No. 494.

Order That Original Exhibits be Transmitted to Supreme Court.

It appearing to the Court that certain original exhibits herein were heretofore placed in the custody of the marshal and clerk of this Court, and an appeal to the Supreme Court of the United States having been allowed.

It is ordered that the marshal and clerk of this Court transmit to the clerk of said Supreme Court at the city of Washington, in the District of Columbia, as a part of the record on appeal, all original exhibits in their custody.

United States Circuit Court of Appeals, for the Ninth Circuit.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and THE CENTRAL TRUST COMPANY, of New York,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

No. 494.

Clerk's Certificate to Transcript on Appeal.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two thousand six hundred and eighty-five (2,685) pages, numbered from one (1) to two thousand six hundred and eighty-five (2,685), inclusive, comprised in the preceding six consecutive volumes, to be a full, true and correct copy of the transcript of record on file herein, as well as of the order of submission, the opinion, the decree, the assignment of errors, the petition for and order allowing an appeal to the Supreme Court and fixing the amount of bond, the order of Court allowing an appeal, the bond on appeal, and the order of Court directing the transmission of all of the original exhibits herein to the clerk of the Supreme

Court, which, together with the following enumerated original exhibits, viz: Defendants' Exhibits Nos. 47a, 47 b, 47c, 47d, and 47e, heretofore placed in the custody of the clerk of this Court, and Plaintiff's Exhibits Nos. 13, 14, and 15, and Defendants' Exhibits Nos. 260, 263, 267, 270, 273, 276, 279, 282, 285, 288, 291, 292, 293, 294, 295, 296, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, and 323, heretofore placed in the custody of the marshal of this Court, and this day transmitted, as a part of the transcript of record on appeal herein, to the clerk of the Supreme Court of the United States, pursuant to an order of Court heretofore entered herein, constitute the entire record herein on appeal to the Supreme Court of the United States.

Attest my hand and the seal of said United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California, this sixteenth day of October, A. D. 1899.

[Seal] F. D. MONCKTON,
Clerk.

[Cancelled Internal Revenue Stamp.]

Citation on Appeal to Supreme Court U. S.

UNITED STATES OF AMERICA: SS.

To the UNITED STATES OF AMERICA,
GREETING:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on December 2nd 1899, pursuant to an appeal filed in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein the Southern Pacific Railroad Company and others are appellants, and the United States of America is appellee, to show cause, if any there be, why the decree rendered on October 2nd 1899, by the said United States Circuit Court of Appeals, against the said appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand, at the City of San Francisco, in the said Ninth Circuit, on October 9th 1899.

WILLIAM B. GILBERT,
Judge.

I admit due service of the foregoing Citation, on October 10th 1899.

JOSEPH H. CALL,
Special U. S. Attorney.

(Endorsed:) Citation on Appeal to Supreme Court U. S. Filed Oct. 17, 1899, F. D. Monckton, Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 524.

THE UNITED STATES, APPELLANT,

v.

THE SOUTHERN PACIFIC RAILROAD COMPANY (D. O. MILLS AND HOMER S. KING, TRUSTEES) AND THE CENTRAL TRUST COMPANY OF NEW YORK.

CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED JANUARY 15, 1900.

(17669.)

(For record on main appeal see No. 152.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 185.

THE UNITED STATES, APPELLANT,

v.

THE SOUTHERN PACIFIC RAILROAD COMPANY (D. O. MILLS AND HOMER S. KING, TRUSTEES) AND THE CENTRAL TRUST COMPANY OF NEW YORK.

CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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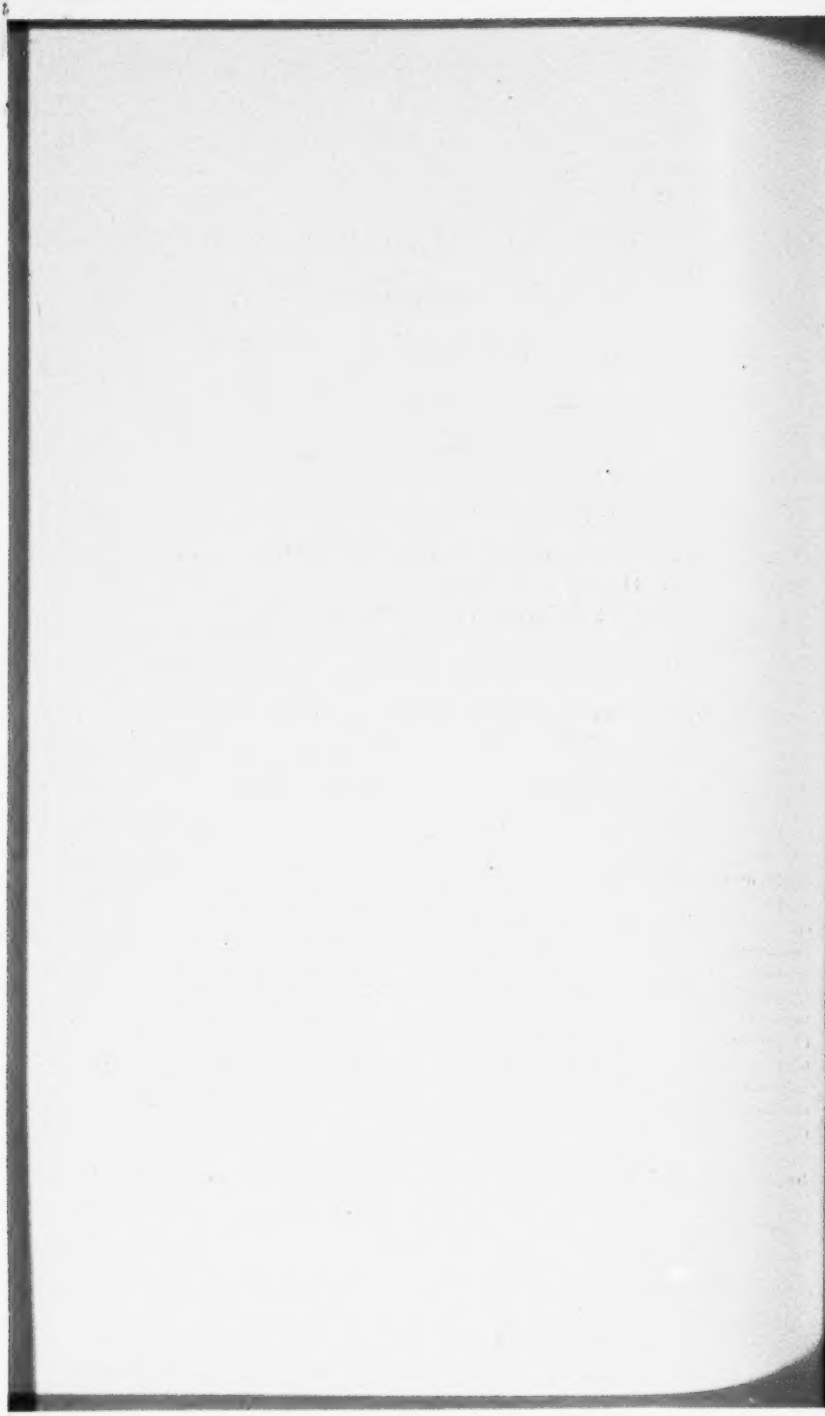


UNITED STATES OF AMERICA—ss.

Citation.

To The Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, and the Central Trust Company of New York, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the city of San Francisco, in the State of California on the twenty-eighth day of November, A. D. 1898, pursuant to an order allowing an appeal entered in the Clerk's office of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, from a final decree made and entered on the sixth day of June, 1898, in that certain cause, being in equity, No. 600, wherein the United States of America are complainants and appellants and you are defendants and appellees, to show cause, if any there be, why the said decree rendered against said appellants as in the said order allowing the appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this twenty-first day of November, A. D. 1898, and of the Independence of the United States, the one hundred and twenty-third.

ERSKINE M. ROSS,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, appellants, vs. The Southern Pacific Railroad Company et al., appellees. Citation.

Copy hereof received November 21, 1898, subject to all objections.

WILLIAM SINGER, Jr.,
Attorney for Defendants.

Filed Nov. 21, 1898. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA, Complainants, vs. SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and HOMER S. KING, Trustees, and CENTRAL TRUST COMPANY OF NEW YORK, Defendants.	**No. 600.**

Petition for, and Order Allowing Appeal.

To the Judges of the United States Circuit Court, Ninth Circuit:

The United States of America, conceiving themselves aggrieved by the decree made and entered herein on the

sa ay of June, 1898, appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and file herewith their assignment of errors, asserted and intended to be urged upon appeal, and they pray that their appeal may be allowed; and further pray that upon this appeal being allowed, that all proceedings in this cause may be stayed, pending such appeal.

And your petitioners further pray that in pursuance of the provisions of section 1013, United States Revised Statutes, and of section 11, of the act of Congress of March 3, 1891, establishing the Circuit Courts of Appeal, that the transcript of the record filed in the said Circuit Court of Appeals, Ninth Circuit, by the defendants herein upon their appeal heretofore allowed, may be used by both parties, and that your petitioners may be heard thereon in the same manner as if records had been filed by the appellants in both cases.

Dated this thirty-first day of October, 1898.

JOSEPH H. CALL,

Special Assistant United States Attorney and of Counsel for United States.

Order Allowing Same.

The foregoing petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the transcript of the record filed in the said Circuit Court of Appeals by the defendants herein, upon their appeal heretofore allowed, may be used by both parties, and that this appeal of the United States may be heard thereon in the same man-

ner as if records had been filed by the appellants in both cases, and to the end that a full and complete transcript of the record shall be made and transmitted to said Circuit Court of Appeals, the clerk of this Court shall make and transmit to the said Circuit Court of Appeals in addition to the record filed by the defendants on their appeal, a true copy of the petition of the United States for appeal, their assignment of errors, the order allowing appeal and all other proceedings in the case, not included in the transcript of the record filed by the defendants, as aforesaid.

Dated this thirty-first day of October, 1898.

ROSS,
Circuit Judge.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Complainants,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and HOMER S. KING, Trustees, and CENTRAL TRUST COMPANY OF NEW YORK,
Defendants.
No. 600.

Assignment of Errors.

The United States, in connection with their petition for appeal therein, present and file therewith their assign-

ment of errors, as to which matters and things they say that the decree entered herein on June 6, 1898, is erroneous, towit:

1. The Court erred in decreeing that the United States take nothing as to the lands, or any of them, adjudged by said decree to have been sold by the Southern Pacific Railroad Company to third persons in good faith and for value, being the lands described on pages No. 15 to No. 20, inclusive, of said decree, except the southeast one-quarter of section 25, township 9 north, range 15 west, San Bernardino meridian, it appearing that said lands had been contracted to be sold by said railroad company to third persons upon partial payments, and that only a part of the purchase price had been paid, and that no sale had been completed or deed to any of said lands executed, prior to the commencement of this suit.

2. The Court erred in refusing to adjudge the United States to be the owners and to quiet their title to the said lands or any of them.

3. The Court erred in refusing to adjudge that the defendants had no title or interest in said lands or any of them.

4. The Court erred in refusing to adjudge the United States to be the owner of the legal title to said lands and of all interest and estate claimed by the Southern Pacific Railroad Company therein, subject only to the equities in favor of said purchasers respectively to the equities in favor of said purchasers respectively to the amounts actually paid upon the purchase price.

5. The Court erred in adjudging that patents issued by the United States to defendant Southern Pacific Railroad

Company for said lands, pending this suit, granted to or conferred upon the defendants or any of them, any right, title or interest in said lands or any of them.

6. The Court erred in adjudging that said lands described aforesaid, or any of them, were sold by the Southern Pacific Railroad Company to third persons in good faith or for value.

7. The Court erred in adjudging that the terms of the contracts, under which said purchasers and each of them contracted to purchase said lands, did not carry notice to such purchasers, and each of them, of the right and title of the United States to said lands.

8. The Court erred in adjudging that its said decree shall not cancel or vacate any point issued by the United States to the Southern Pacific Railroad Company for lands sold by it to a bona fide purchaser.

9. The Court erred in refusing to adjudge what title and rights the defendants before the Court had in said lands.

10. The Court erred in refusing to give the United States a decree for those lands adjudged to have been sold by the Southern Pacific Railroad Company since November 22, 1889, the date of commer[illegible]ent of the suits in the cases reported in 146 U. S. 615-[illegible]9.

11. The Court erred in refusing to adjudge that the Southern Pacific Railroad Company and those in privity with that company, who contracted to purchase lands while the former suits reported in 146 U. S. 615-619, were pending, were not bound by the adjudications in those cases.

12. TheCourt erred in adjudging that any executory contract for the sale of land made by the Southern Pacific

Railroad Company is valid as to any payment made thereon after notice to the purchaser of the rights of the United States.

Wherefore, the United States prays that said decree may be reversed in said particulars and that the United States be granted the relief therein set forth.

JOSEPH H. CALL,

Special asistant United States attorney and of counsel for the United States.

[Endorsed]: No. 600. In United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co. *et al.* Petition for Appeal, etc.

Filed October 31, 1898. Wm. M. Van Dyke, Clerk. Joseph H. Call, special United States attorney.

In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

THE UNITED STATES OF AMERICA, Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and the CENTRAL TRUST COMPANY of New York, Defendants.

No. 600.

Clerk's Certificate to Transcript.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, do hereby certify the foregoing six (6) typewritten pages, numbered from one to six inclusive, and comprised in one volume, to be a full, true and correct copy of the petition of the United States for appeal, their assignment of errors, and the order allowing the appeal, the same being all proceedings in the case not included in the transcript of the record filed in the United States Circuit Court of Appeals by the defendants herein, upon their appeal heretofore allowed, and that the same together constitute the transcript of the record on appeal to the United States Circuit Court of Appeals of the Ninth Circuit in said cause, in ac-

cordance with the order allowing and granting the petition for appeal by the United States, and prayer for *supersedeas.*

I do further certify that the cost of the foregoing record is $4.10, the amount whereof is to be paid me by the United States of America, the appellants in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, this twenty-fifth day of November, in the year of our Lord, one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-third.

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

[Seal]

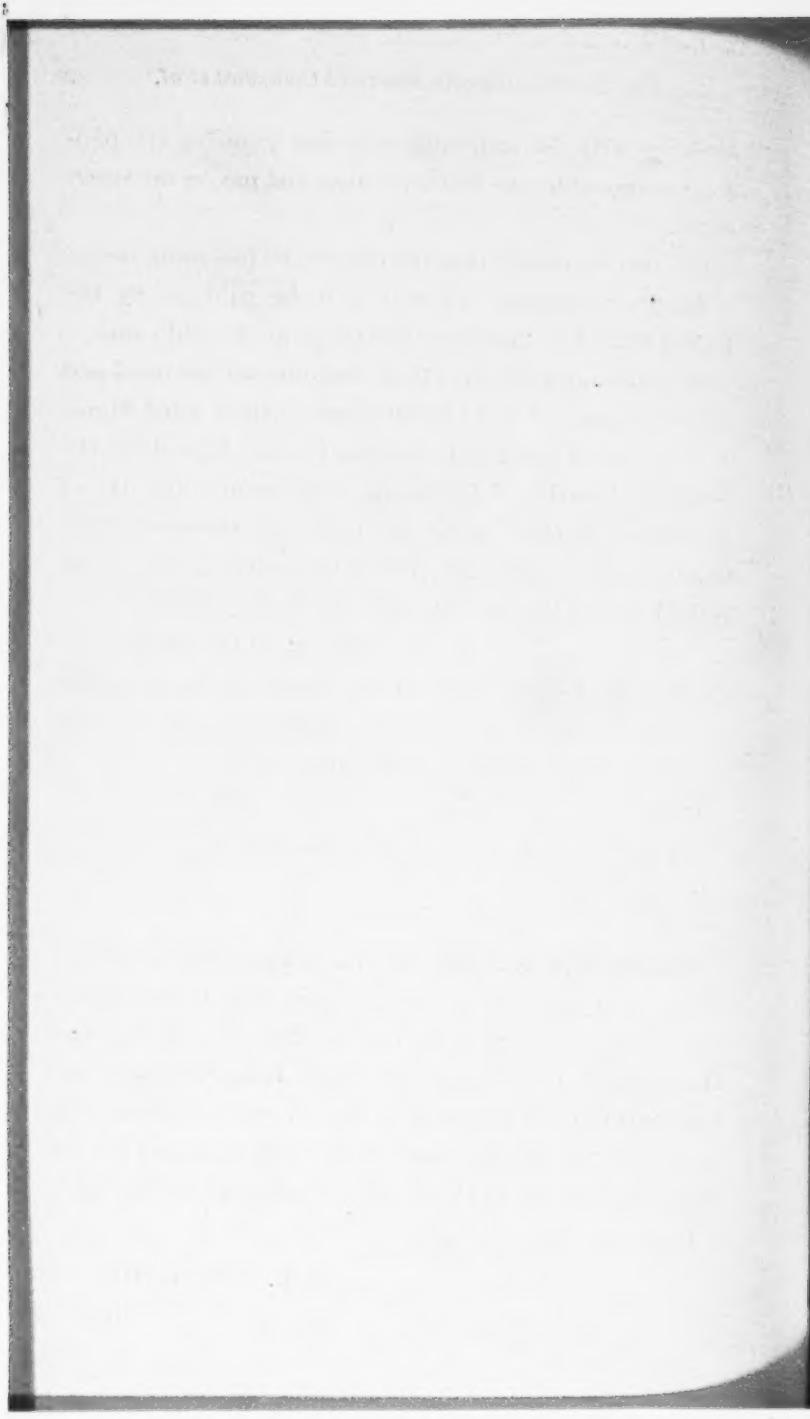
[Cancelled 10-ct. Internal Revenue Stamp.]

[Endorsed]: No. 495. In the United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, appellants, vs. The Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, and the Central Trust Company of New York, appellees. Appeal from the Circuit Court of the United States for the Southern District of California. Transcript of Record.

Filed November 28, 1898.

F. D. MONCKTON,

Clerk.



10 At a stated term, to wit, the October term, A. D. 1898, of the United States circuit court of appeals for the ninth circuit, held at the court room in the city and county of San Francisco on Wednesday the third day of May, in the year of our Lord one thousand eight hundred and ninety-nine. Present: The Honorable William B. Gilbert, circuit judge; Honorable William W. Morrow, circuit judge; Honorable Thomas P. Hawley, district judge.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY ET AL. } No. 495.

Ordered appeal argued by Joseph H. Call, esquire, special United States attorney, and William Singer, jr., esquire, counsel for appellees, and submitted to the court for consideration and decision.

11 United States circuit court of appeals for the ninth circuit, October term, 1899.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Homer S. King, Trustees, and The Central Trust Company of New York, appellees. } No. 495.

Appeal from the circuit court of the United States for the southern district of California.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of California, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

(Endorsed:) Decree. Filed Oct. 9, 1899. F. D. Monckton, clerk.

12 In the United States circuit court of appeals, ninth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and Homer S. King, Trustees, and Central Trust Company of New York. } No. 495.

Petition for and order allowing appeal.

To the judges of the United States circuit court of appeals, ninth circuit:

The United States of America, conceiving itself aggrieved by the decree made and entered herein on the day of October, 1899, appeals from the said decree to the United States Supreme Court, and files herewith its assignment of errors, asserted and intended to be urged upon appeal, and it prays that its appeal may be allowed; and further

prays that upon this appeal being allowed, that all proceedings in this cause may be stayed, pending such appeal.

And your petitioner further prays that the transcript of the record filed in the Supreme Court by the defendants herein upon their appeal heretofore allowed may be used by both parties, and that your petitioner may be heard thereon in the same manner as if records had been filed by the appellants in both cases.

Dated this 4th day of December, 1899.

JOSEPH H. CALL,
Special Assistant United States Attorney,
and of Counsel for United States.

13 *Order allowing same.*

The foregoing petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the transcript of the record filed in the said Supreme Court by the defendants herein, upon their appeal heretofore allowed, may be used by both parties, and that this appeal of the United States may be heard thereon in the same manner as if records had been filed by the appellants in both cases; and to the end that a full and complete transcript of the record shall be made and transmitted to said Supreme Court, the clerk of this court shall make and transmit to the said Supreme Court, in addition to the record filed by the defendants on their appeal, a true copy of the petition of the United States for appeal, its assignment of errors, the order allowing appeal, and all other proceedings in the case not included in the transcript of the record filed by the defendants, as aforesaid.

Dated this day of December, 1899.

14 In the United States circuit court of appeals, ninth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and Homer S. King, Trustees, and Central Trust Company of New York. } No. 495.

Assignment of errors.

The United States, in connection with its petition for appeal therein, presents and files therewith its assignment of errors, as to which matters and things it says that the decree entered herein on the day of October, 1899, is erroneous, to wit:

1. The court erred in decreeing that the United States take nothing as to the lands, or any of them, adjudged by said decree to have been sold by the Southern Pacific Railroad Company to third persons in good faith and for value, being the lands described on pages No. 15 and No. 20, inclusive, of said decree, except the southeast one quarter of section 25, township 9 north, range 15 west, San Bernardino meridian, it appearing that said lands had been contracted to be sold by said railroad company to third persons upon partial payments, and that only a part of

the purchase price had been paid, and that no sale had been completed or deed to any of said lands executed prior to the commencement of this suit.

15 2. The court erred in refusing to adjudge the United States to be the owner of and to quiet its title to the said lands, or any of them.

3. The court erred in refusing to adjudge that the defendants had no title or interest in said lands or any of them.

4. The court erred in refusing to adjudge the United States to be the owner of the legal title to said lands and of all interest and estate claimed by the Southern Pacific Railroad Company therein, subject only to the amounts favor of said purchasers respectively to the equities in actually paid upon the purchase price.

5. The court erred in adjudging that patents issued by the United States to defendant Southern Pacific Railroad Company for said lands, pending this suit, granted to or conferred upon the defendants, or any of them, any right, title, or interest in said lands or any of them.

6. The court erred in adjudging that said lands described aforesaid, or any of them, were sold by the Southern Pacific Railroad Company to third persons in good faith or for value.

7. The court erred in adjudging that the terms of the contracts, under which said purchasers and each of them contracted to purchase said lands, did not carry notice to such purchasers, and each of them, of the right and title of the United States to said lands.

8. The court erred in adjudging that its said decree shall not cancel or vacate any patent issued by the United States to the Southern Pacific Railroad Company for lands sold by it to a bona fide purchaser.

9. The court erred in refusing to adjudge what title and rights the defendants before the court had in said lands.

16 10. The court erred in refusing to give the United States a decree for those lands adjudged to have been sold by the Southern Pacific Railroad Company since November 22, 1889, the date of commencement of the suits in the cases reported in 146 U. S., 615-619.

11. The court erred in refusing to adjudge that the Southern Pacific Railroad Company and those in privity with that company, who contracted to purchase lands while the former suits reported in 146 U. S., 615-619, were pending, were not bound by the adjudications in those cases.

12. The court erred in adjudging that any executory contract for the sale of land made by the Southern Pacific Railroad Company is valid as to any payment made thereon after notice to the purchaser of the rights of the United States.

Wherefore, the United States prays that said decree may be reversed in said particulars and that the United States be granted the relief sought.

JOSEPH H. CALL,
Special Assistant United States Attorney
and of Counsel for the United States.

(Endorsed:) Petition for appeal of U. S., assignment of errors, &c. Filed December 4, 1899, F. D. Monckton, clerk, U. S. circuit court of appeals for the ninth circuit.

17 At a stated term, to wit, the October term, A. D. 1899, of the United States circuit court of appeals for the ninth circuit, held at the court room, in the city and county of San Francisco, on Monday the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-nine. Present, the Honorable William W. Morrow, circuit judge; Honorable John J. De Haven, district judge.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York. } No. 495.

The petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the transcript of the record filed in the Supreme Court by the defendants herein, upon their appeal heretofore allowed, may be used by both parties, and that this appeal of the United States may be heard thereon in the same manner as if records had been filed by the appellants in both cases; and to the end that a full and complete transcript of the record shall be made and transmitted to said Supreme Court the clerk of this court shall make and transmit to the said Supreme Court, in addition to the record filed by the defendants on their appeal, a true copy of the petition of the United States for appeal, its assignment of errors, the order allowing appeal, and all other proceedings in the case not included in the transcript of the record filed by the defendants as aforesaid.

18 United States circuit court of appeals for the ninth circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York, appellees. } No. 495.

Certificate of clerk C. C. A. to transcript.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing seventeen (17) pages, numbered from one (1) to seventeen (17), inclusive, to be a full, true, and correct copy of the transcript of the record, the order of submission, the decree, the petition for an appeal to the Supreme Court of the United States, the assignment of errors filed therewith, and the order allowing the appeal to the Supreme Court of the United States in the above-entitled cause, as the originals thereof appear of record in my office, the same being all proceedings in the case not included in the transcript of the record filed in the Supreme Court of the United States by the appellees herein upon their appeal heretofore allowed, and that the same together constitute the transcript of the record on appeal to

the Supreme court of the United States in the above-entitled
19 cause in accordance with the order allowing the appeal of the United States and as requested and approved by the special United States attorney.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 21st day of December, A. D. 1899.

[SEAL.] F. D. MONCKTON, *Clerk.*

20 UNITED STATES OF AMERICA, *ss.*

Citation.

To the Southern Pacific Railroad Company, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within sixty days from the date hereof, pursuant to an appeal allowed on behalf of the United States in open court on the fourth day of December, A. D. 1899, in the United States circuit court of appeals, ninth circuit, wherein the United States is plaintiff and appellant and you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this fourth day of December, A. D. 1899.

WM. W. MARVIN,
United States Circuit Judge and Presiding Judge of the United States Circuit Court of Appeals, Ninth Circuit.

21 [Indorsed:] No. 495. In the Supreme Court of the United States. United States vs. S. P. R. R. Co. et al. Citation on appeal of the United States to Supreme Court U. S. Filed December 14, 1899. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

A copy of this citation was served on me on December 9th, 1899.

WM. SINGER, Jr.,
Atty. for the Defendants (Appellees).

(Indorsement on cover:) File No., 17609. U. S. C. C. of Appeals, 9th circuit. Term No., 185. The United States, appellant, vs. The Southern Pacific Railroad Company, D. O. Mills et al. Filed January 15, 1900. Cross-appeal. (See Term No., 152, A. D. 1900. File No., 17556 for record on main appeal).

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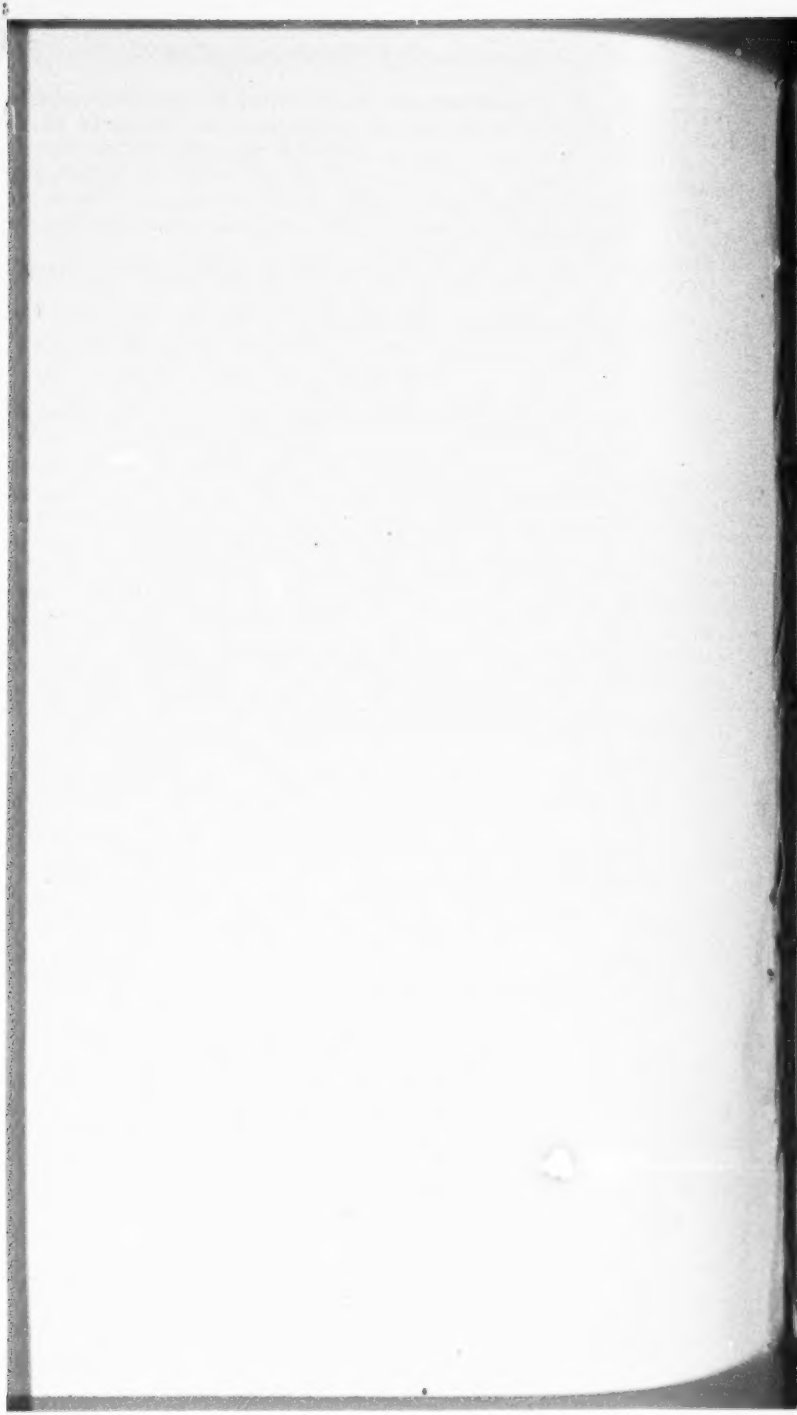

No. 18

FILED
JAN 24 1901
JAMES H. MCKENNEY

By. of Payson & Evarts for Appts

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 18

Filed Jan. 24, 1901.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and THE CENTRAL TRUST COMPANY OF NEW YORK,
Appellants,

against

THE UNITED STATES OF AMERICA,
Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE APPELLANTS.

L. E. PAYSON,
MAXWELL EVARTS,
Of Counsel for the Appellants.

C. G. Burgoyne, Walker and Centre Streets, New York.

4944

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 152.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and THE CENTRAL TRUST COMPANY OF NEW YORK,
Appellants,

against

THE UNITED STATES OF AMERICA,
Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE APPELLANTS.

Statement.

By the third section of the Act of Congress approved July 27, 1866, and entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast" (14

U. S. Stat., 292) lands were granted to the Atlantic and Pacific Railroad Company in aid of its projected line from the Town of Springfield, Missouri, to the Pacific Ocean (Act printed in full in Appendix, p. I).

By the 18th section of the same Act of Congress a contemporaneous grant of lands was made to the Southern Pacific Railroad Company, of California, in aid of a road connecting with the proposed road of the Atlantic and Pacific Railroad Company near the boundary line of the State of California, and running to San Francisco (Appendix, p. XIV.). This grant is known as the "Southern Pacific Main-Line Grant."

On the 28th of June, 1870, Congress passed a joint resolution approving the route indicated by the map filed by the Southern Pacific Railroad Company on January 3, 1867, and making certain provisions as to the examination by the Secretary of the Interior of the various sections of the railroad when completed and as to the issuing of patents to said company for the lands granted by said Act of July 27, 1866 and coterminous to each constructed section of road (Appendix, p. XVI.).

By Section 23 of the Act of Congress approved

March 3, 1871, and entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes" (16 U. S. Stat., 573), a grant of land was made to the Southern Pacific Railroad Company of California in aid of a line of railroad from a point at or near Tehachapa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River. This grant is known as the "Southern Pacific Branch-Line Grant" and was made upon the like terms and conditions as the Main-Line Grant under the Act of 1866, above referred to, but subject to the proviso that it should "in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company" (Appendix, p. XVII.).

All three of these grants (the grant to the Atlantic and Pacific, and the Main-Line and Branch-Line Grants to the Southern Pacific) were made upon the terms and conditions of the 3d section of the Atlantic and Pacific Act, which prescribed (in States) primary or granted limits ten alternate sections (*i. e.*, twenty miles) in width on each side of the railroad line adopted

by the Company, and indemnity limits extending ten miles beyond such primary limits.

The Atlantic and Pacific Railroad Company never built any portion of its projected railroad in the State of California, and on the 6th of July, 1886, an Act of Congress was passed (24 U. S. Stat., p. 123), forfeiting and restoring to the public domain the lands theretofore granted to said Railroad Company by the said Act of July 27, 1866 (Appendix, p. XVIII.).

After the Atlantic and Pacific Forfeiture Act of 1886, the Southern Pacific Railroad Company claimed in the Department of the Interior that (as the Atlantic and Pacific Company had ceased to have any claim thereto) it was entitled to the lands common to the primary limits of the two contemporaneous grants under the Act of 1866 to the Atlantic and Pacific Railroad Company and the Southern Pacific Railroad Company (Main-Line Grant), but Secretary Lamar held that the right of the Southern Pacific Company was only to a moiety of such lands (Appendix, p. XIX.).

It was further claimed in the Department of the Interior on behalf of the Southern Pacific Railroad Company, both as to its Main-Line and Branch-Line Grants, that, upon the forfeiture of the lands

granted to the Atlantic and Pacific Railroad Company, the Southern Pacific Company was entitled to select, in lieu of its losses within the primary limits of its Main or Branch Line grants, any of the lands which had been restored by such Forfeiture Act to the public domain, upon the principle that the right of the grantee in respect of indemnity lands depended entirely upon the status of such lands at the date of selection.

The United States thereupon, and on May 14, 1894, filed in the United States Circuit Court for the Southern District of California the bill of complaint in this suit against the Southern Pacific Railroad Company and other defendants seeking to quiet the title of the United States to the lands restored to the public domain by the Atlantic and Pacific Forfeiture Act, and to restrain the Southern Pacific Railroad Company from making any claim thereto (Rec., p. 8).

The lands involved in this suit are the sections of land designated by odd numbers within thirty miles on each side of the located route of the Atlantic and Pacific Railroad as shown by the maps filed by the Atlantic and Pacific Company in the General Land Office (except those lands embraced in then pending suits of the

United States against the Southern Pacific Railroad Company) (Rec., p. 36), and the prayer of the bill is "that the defendants be perpetually enjoined from having or claiming any right, title or interest in or to said lands from, through or under said acts of Congress, approved July 27, 1866, or March 3, 1871, or the joint resolution of Congress approved June 28, 1870" (Rec., p. 37).

The case was tried before the Honorable ERSKINE M. ROSS, United States Circuit Judge for the Southern District of California, and on the 6th day of June, 1898, a final decree was entered in the cause enjoining and restraining the Southern Pacific Railroad Company from having or claiming any right, title, interest or lien in or to any of the lands referred to in the bill of complaint, and the title of the United States to said lands was quieted, with the exception of the lands embraced in then pending suits brought by the United States against the Southern Pacific Railroad Company, and excepting, also, lands which, prior to the commencement of this suit, were sold by the Southern Pacific Railroad Company to third persons, who purchased the same in good faith and for value, as to which lands it was adjudged that the

United States should take nothing (Rec., p. 336 *et seq.*).

Judge Ross in his opinion does not enter into any discussion of the issues raised by the pleadings in the cause, but merely holds that they are no longer open questions because of previous decisions of the Supreme Court of the United States. He says (at page 366 of the Record):

> "These grants were the subjects of full consideration in cases heretofore brought in this Court and finally determined on appeal by the Supreme Court of the United States: United States vs. Southern Pacific Railroad Company, 146 U. S., 570; United States vs. Colton Marble and Lime Co. and United States vs. Southern Pacific Railroad Company, 146 U. S., 615; and Southern Pacific Railroad Company vs. United States, 168 U. S., 1. In my opinion those decisions of the Supreme Court determined that the Southern Pacific Company by its grants acquired no interest or right in or to any of the odd-numbered sections of land embraced within the granted or indemnity limits of the Atlantic and Pacific Railroad Company, and mortgaged none of its codefendants."

From the final decree of June 6, 1898, an appeal was taken by the Southern Pacific Railroad Company and its co-defendants to the United States Circuit Court of Appeals for the Ninth

Circuit (Record, p. 600); and on October 2, 1899, a decree was entered in said Court affirming the decree below (Record, p. 2672).

From the decree of said Circuit Court of Appeals of October 2, 1899, the present appeal to this Court has been taken (Record, p. 2680).

Assignment of Errors.

The Circuit Court of Appeals erred:

I. In not reversing the decree of the Circuit Court made and entered herein on June 6, 1898, and directing the said Court to render a decree dismissing the bill of the United States.

II. In deciding that the United States are the owners by title and fee simple absolute, or the owners in anywise, of the lands, or any of them, in controversy, and described in the pleadings and in the decree of the Circuit Court herein.

III. In deciding that the defendants and appellants, each of them, be enjoined and restrained from having or claiming any right, title, interest or lien in or to the lands, or any of them, in controversy, and described in the pleadings and in the decree of said Court herein.

IV. In deciding that the defendants and ap-

pellants were not entitled to a moiety in that part of the lands in controversy which is common to the place limits of the grant to the Alantic and Pacific Railroad Company, and the place limits of the Main-Line Grant of the Southern Pacific Company, under the contemporaneous grants to the two companies by the Act of Congress, approved July 27, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast."

V. In deciding that the defendants and appellants were not entitled to all lands within the primary limits of the Southern Pacific Main-Line Grant which also fell within the indemnity limits of the Atlantic and Pacific Grant, the two grants being contemporaneous grants under the said Act of Congress approved July 27, 1866.

VI. In deciding that the defendants and appellants were not entitled by reason of the grant under the said Act of Congress, approved July 27, 1866, to select lands which were within the indemnity limits of the Main Line Southern Pacific Grant, and which prior to the Atlantic and Pacific Forfeiture Act had not been selected by the Atlantic and Pacific Railroad Company,

notwithstanding that such lands had formerly been also within the indemnity limits of the Atlantic and Pacific Grant.

VII. In deciding that the defendants and appellants were not entitled to select lands within the Southern Pacific indemnity limits, under either its Main-Line or Branch-Line Grants, notwithstanding that such lands had formerly been within the place or indemnity limits of said Atlantic and Pacific Grant.

THE DECISIONS IN THE FORMER CASES.

It is important that the Court should have well in mind the questions which have already been decided by this Court in previous cases relating to the Southern Pacific and Atlantic and Pacific Grants, as well as the questions which are presented upon this appeal, and before taking up the argument of this case we deem it useful to state in some detail the gist of the decisions in United States vs. Southern Pacific Railroad Company, 146 U. S., 570; United States vs. Colton Marble and Lime Co., and United States vs. Southern Pacific Railroad

Company, 146 U. S., 615, and Southern Pacific Railroad Company vs. United States, 168 U. S., 1.

THE CASE OF UNITED STATES VS. SOUTHERN PACIFIC RAILROAD COMPANY, 146 U. S., 570:

The lands in controversy in this case were lands common to the primary or place limits of the Atlantic and Pacific Grant and of the Southern Pacific *Branch-Line* Grant. (It is to be observed that no such controversy arises in this case, which, so far as Southern Pacific place lands are concerned, is limited entirely to the *place* lands under the Southern Pacific *Main-Line* Grant, which was contemporaneous with the Atlantic and Pacific Grant and not in anywise subsequent thereto. The difference in the principles applicable to the place lands under the Southern Pacific *Main-Line* Grant of 1866 and to the place lands under the Southern Pacific *Branch-Line* Grant of 1871 is too obvious to require further comment.)

This case in 146 U. S. simply held that the prior grant to the Atlantic and Pacific in 1866 and the subsequent Branch-Line Grant to the Southern Pacific in 1871 were grants *in præsenti*, and that upon the filing by

the Atlantic and Pacific in April, 1872, of its map of definite location, the title to its place lands attached as of July 27, 1866, the date of its granting act, which was over five years before the date of the Branch-Line Grant to the Southern Pacific. In other words, the title to the place lands under the Atlantic and Pacific grant was to be deemed to have passed to that Company in 1866, and remained its property until the Forfeiture Act of 1886. This Court further held that, upon the restoration of the Atlantic and Pacific place lands to the public domain, the Branch-Line Grant to the Southern Pacific, *so far as its place lands were concerned*, was in no way affected or extended, and that, if the latter had no claim before the Act of Forfeiture to such restored lands falling within its place limits, it had none thereafter.

CASES OF UNITED STATES VS. COLTON MARBLE AND LIME COMPANY, AND UNITED STATES VS. SOUTHERN PACIFIC RAILROAD COMPANY, 146 U. S., 615:

The lands involved in these cases were within the place limits of the Southern Pacific *Branch* Line under the Act of 1871 and the indemnity

limits of the Atlantic and Pacific Company. (It is sufficient for the present to say that there is no controversy in the present case in regard to any land within the *place* limits of the Southern Pacific *Branch*-Line Grant.)

The decision of this case was put upon the single ground that the Southern Pacific *Branch*-Line Grant of 1871 was made upon the express condition that it should "in no way affect or impair the rights, present or *prospective*, of the Atlantic and Pacific Railroad Company," and that, by the use of the word "prospective," Congress intended that lands falling within the Atlantic and Pacific indemnity limits—that is, lands to which it had a *prospective right of selection*—should not be subject to be taken as *place* lands under the Southern Pacific *Branch*-Line Grant.

In the course of the opinion Mr. Justice BREWER was very careful to point out that the question would have been very different if the Southern Pacific had been claiming the right to select *indemnity* lands under its *Branch*-Line Grant of 1871 from the lands of the Atlantic and Pacific grant which had been restored to the public domain by the Forfeiture Act of 1886. At page 618 he said:

> "It must be borne in mind that these lands were in the granted limits of the Southern Pacific, and that they are not lands in respect to which that company would have a right of selection, and might defer the exercise of that right until such time as suited it. Being within the granted limits of the Southern Pacific, all its rights thereto vested at once, at the time of the filing of the map of definite location, and were not and could not be added to after that time; everything it could have in those lands it had then, and at that time there was an existing prospective right on the part of the Atlantic and Pacific Company to make a selection."

CASE OF SOUTHERN PACIFIC RAILROAD COMPANY VS. UNITED STATES, 168 U. S., 1:

As appears from the opinion of Mr. Justice HARLAN, the only lands to which any claim was made by the Southern Pacific Railroad Company in this case, and the only lands as to which the Court gave any consideration in coming to its decision, were the lands within the limits of the Southern Pacific *Branch*-Line Grant under the Act of 1871. That is, the case did not relate in any way to the lands covered by the Main-Line Grant under the Act of 1866. At page 29 he said:

"The Southern Pacific Railroad Company

constructed the road thus contemplated, and claims that the lands here in dispute passed to it under the above Act of 1871."

Again at page 46 it was said:

"The lands now in controversy are situated opposite to and are coterminous with the first, second and fourth sections of the Southern Pacific Railroad as constructed between 1873 and 1877, inclusive, and within the primary and indemnity limits of the grant to the Southern Pacific Railroad Company made by the 23d section of the Texas and Pacific Act of March 3, 1871."

It is no doubt true that a part of the land embraced within the limits of the Southern Pacific *Branch*-Line Grant was also included within the limits of the Southern Pacific *Main*-Line Grant, as by reason of the proximity of the two lines at certain points the lands granted to them overlap. It was not known at the time the case in 168 U. S. was brought or tried that the Southern Pacific had title under the Main-Line Grant (as well as the claim which it, in fact, asserted in the suit under the Branch-Line Grant) to a small portion of the lands embraced in that suit, and this fact was not observed until that case was being prepared for argument upon appeal.

The suit was brought by the United States to quiet its title to the forfeited Atlantic and Pacific lands which were also within the limits of the *Branch*-Line Grant to the Southern Pacific under the Act of 1871. The pleadings of both parties were framed to meet this issue alone. No claim to the lands embraced in the suit was asserted under the Main-Line Grant. The evidence taken in the case related only to the rights of the Southern Pacific under the Act of 1871. Furthermore, the cases were argued on appeal upon the theory that this was the sole issue in the case, and the Court undertook to decide such question only and nothing else.

The decision of this Court was that the Southern Pacific Railroad Company was concluded by the decisions of the Court in 146 U. S., and that under the settled principles of *res judicata* it was too late for it to undertake to reopen the question of whether the map filed with the Land Department in 1872 by the Atlantic and Pacific was a map of "definite" location or a map of "general or preliminary route."

It is to be noticed that the cases reported in 146 U. S. all relate solely to the *Branch*-Line Grant to the Southern Pacific under the Act of

1871; and as the case in 168 U. S., now being discussed, was decided upon the ground that the land grants involved therein were the same as the land grants in controversy in the cases in 146 U. S., it is most persuasive evidence that the Court in this case understood that the controversy before it related only to the Southern Pacific *Branch*-Line Grant under the Act of 1871.

In other words, the decisions in the Southern Pacific Railroad cases in 146 U. S. and 168 U. S. relate only to the land grant to the Southern Pacific under the Texas Pacific Act of 1871, and such decisions did not, and did not pretend to, determine any question in regard to the Southern Pacific land grant under the Act of 1866, known as the "Main-Line Grant."

The two facts to be kept in mind in regard to the cases in 146 U. S. and 168 U. S. are:

FIRST. That the only lands in controversy in the cases in 146 U. S. were lands within the *place* limits of the Southern Pacific *Branch*-Line Grant.

SECOND. That the case in 168 U. S. was decided solely upon the ground that the only questions raised therein had been decided adversely to the railroad company in the cases in 146 U. S.

FIRST POINT.

The Southern Pacific Railroad Company is entitled to a moiety of the conflicting place lands granted to it and the Atlantic and Pacific Railroad Company under the Act of 1866.

The lands involved in this point are shown in red on Map 1.

It is the well-established doctrine of this Court that when lands are granted by the same Act of Congress to aid in the construction of two railroads, which lands necessarily overlap, each grantee takes as of the date of the grant an equal undivided moiety of the lands within the conflicting place limits of the two roads.

In the case of the Sioux City, &c., Railroad vs. United States, 159 U. S., 349, it appeared that the land grants to the Chicago, Milwaukee and St. Paul Railway Company and to the Sioux City & St. Paul Railroad Company were under the same Act of Congress of May 12, 1864, and it was there held that the railroads took the lands common to the place limits of the two grants as tenants in common. Mr. Justice HARLAN, who delivered the opinion of the Court, said at page 364:

MAP(S) IS/ARE TOO LARGE TO BE FILMED

"The rule is well settled that when lands are granted by acts of Congress of the same date, or by the same act, to aid in the construction of two railroads that must necessarily intersect, or which are required to intersect, each grantee—the map of definite location having been filed and accepted—takes, as of the date of the grant, an equal undivided moiety of the lands within the conflicting place limits, without regard to the time of the location of the respective lines.

* * * * *

"The grants for the Sioux City and Milwaukee roads were by the same act. Of the granted sections in place limits common to both roads each company, having filed its map of definite location, took, as of the date of the grant, an equal undivided moiety—no more. The equal undivided moiety granted for one road was not granted, nor could it be used, for the other road. Congress knew when it passed the Act of 1864 that there would be an overlapping of place limits at the required point of intersection of the two roads."

In Donahue vs. Lake Superior Canal, &c., Co., 155 U. S., 386, it appeared that by the Act of Congress of June 3, 1856, grants of land were made in aid of the construction of two railroads, one from Marquette to the State line, and one from Ontonagon to the State line. These grants

were bestowed by the State of Michigan separately upon the two companies. Subsequently the Chicago and Northwestern Railway Company, the beneficial owner of both the Marquette and Ontonagon grants, released the title to the lands within these grants to the State of Michigan. The State of Michigan, however, by its Legislature, authorized a release only of the lands granted in aid of the construction of the Marquette road. It was held by this Court that upon the location of the Ontonagon and Marquette railroads the lands within their conflicting place limits were held by them in undivided moieties, and that, upon the release of the title to these lands to the State and the release by the State to the United States of the Marquette grant only, a novel condition "resulted, in that it left the State and the United States joint owners, each holding the title to an undivided moiety of this body of lands." Notwithstanding the novelty of the situation it was decided that the State and the United States were joint owners of the lands in controversy upon the ground that conflicting place lands under contemporaneous grants are equally divided between the grantees. The syllabus of the case upon this point is as follows:

> "As the land in controversy is near the crossing of two lines that had received separate grants, it is further subject to the rule that where two lines of road are aided by land grants made by the same act, and the lines of those roads cross or intersect, the lands within the 'place' limits of both at the crossing or intersection do not pass to either company in preference to the other, no matter which line may be first located or built, *but pass in equal undivided moieties to each.*"

In Sioux City Railroad vs. Chicago Railway, 117 U. S., 406, the question came up as to the rights of the railway companies in land within the place limits common to the two grants, which were under the same Act of Congress, and it was held that they took this land in equal undivided moieties. At page 409 of his opinion Mr. Justice MILLER said:

> "Of the lands in controversy there were $50{,}539\,^{73}/_{100}$ acres within the ten-mile limits of both roads. This the decree of the Circuit Court held to belong to the companies in equal undivided moieties, and appointed commissioners to make partition of them. This part of the decree was upon the principles we have stated correct, and must be affirmed."

In the case of St. Paul Railroad vs. Winona Railroad, 112 U. S., 720, it was held that:

> "When the acts of Congress in such cases [land grants] are of the same date, or grants are made for different roads by the same statute, priority of location gives no priority of right; but, where the limits of the primary grants which are settled by the location conflict, as by crossing or lapping, *the parties building the roads under those grants, take the sections, within the conflicting limits of primary location, in equal undivided moieties*, without regard to priority of location of the line of the road, or priority of construction." (Syllabus.)

There is, of course, no question but that the Atlantic and Pacific Railroad and the Southern Pacific Railroad Company received grants of land in aid of their respective railroads under the same Act of Congress. The Atlantic and Pacific grant was under the third section of the Act of 1866 (Appendix, p. VI.). The Southern Pacific grant, known as the "*Main*-Line Grant," was under the eighteenth section of the same act (Appendix, p. XIV.). The grants are therefore contemporaneous, and, under the rule of this Court referred to, it is plain that the grantees thereunder became entitled to an undivided one-

half interest in all the conflicting lands within the place limits of both grants.

It was certainly the understanding of the officers of the Interior Department that the United States, by reason of the Atlantic and Pacific Forfeiture Act, became the joint owners with the Southern Pacific of the place lands common to both the Southern Pacific *Main*-Line Grant and the Atlantic and Pacific Grant; and on the 25th of November, 1887, Secretary Lamar instructed Commissioner Stockslager to notify the Southern Pacific Railroad Company to that effect (VI. L. D., 349). We have printed the letter in full at page XIX. of the appendix to this brief, and we quote only the following paragraphs:

> "The Southern Pacific Company located its main line January 3, 1867, and by the terms of the grant its right immediately attached to every odd section of land, not of the character excepted by the grant, and within the ten-mile limit, subject, however, to be divested to the extent of a half interest in every such odd section that might fall within the common limits of both roads, after the filing of the map of definite location by the Atlantic and Pacific Company.

"The Atlantic and Pacific Company filed its map of definite location April 11, 1872, and April 16, 1874, showing that the primary or granted limits of said road overlapped and conflicted with the primary or granted limits of a portion of the Southern Pacific road. As to the lands falling within the granted limits of both roads, the filing of the map of definite location by the Atlantic and Pacific Company, showing such conflict, immediately divested the Southern Pacific Company of the right and title of a half interest in all such odd sections, *and from that moment and by that act the two companies became entitled to equal undivided moieties in such sections*, without regard to the priority of location of the line of the road, or priority of construction, the right of each company relating back to the date of the grant. St. Paul and Sioux City R. R. Co. vs. Winona and St. Paul R. R. Co. (112 U. S., 720); Sioux City R. R. Co. vs. Chicago R. R. Co. (117 U. S. 406).

* * * * *

"The interest of the Atlantic and Pacific Company having been forfeited to the United States, *the effect of said forfeiture was to make the United States a tenant in common with the Southern Pacific Company as to the lands*, and therefore all the odd sections within said limits should still remain in reservation until a partition thereof has been made."

Secretary Lamar was simply following the rule to which we have referred to the effect that the grantees under the same Act of Congress of lands within the primary limits of grants in aid of railroads, which necessarily intersect or run in close proximity upon parallel courses, take such lands as tenants in common, which rule had for the first time been definitely announced by this Court about two years before in the case of St. Paul Railroad vs. Winona Railroad, 112 U. S., 720.

We know of no reason to doubt that the effect of the Forfeiture Act of 1886 was correctly stated by Secretary Lamar. This Act undertook to forfeit and restore to the public domain only the interest of the Atlantic and Pacific in the lands acquired under the Act of 1866, and such interest as to the place lands common to the two grants under said act was simply an undivided one-half interest therein. The claim now made by the Southern Pacific is not to anything which the Southern Pacific would not have been equally entitled to if the Forfeiture Act had not been passed. The Southern Pacific is not seeking any enlargement of the grant to it under the Act of 1866 by reason of the Forfeiture Act of 1886. It is simply

insisting that the right and title to this land which it had before the Atlantic and Pacific Forfeiture Act has not been taken from it because of such act. In other words, the contention now made is that the Southern Pacific had an undivided one-half interest in this land prior to the Act of 1886, and that such interest could not be taken from it by any act which sought simply to forfeit the interest of the Atlantic and Pacific, and that the only result of such forfeiture act was to substitute the United States in place of the Atlantic and Pacific Company as the tenant in common with the Southern Pacific Railroad Company of such land.

Just what answer can be made to this proposition is not at all obvious. The only reason given by the Court below, why this claim was not sustained, was that it was *res judicata* because of the decisions in 146 U. S. and 168 U. S., which have been before referred to. At page 2660 of the record the Circuit Court of Appeals said:

> " It follows that the claim now made that in any event the two companies take the lands within the conflicting lines in equal, undivided moieties, must be considered as having been adjudicated and determined adversely to the claim of the Southern Pacific Company."

We respectfully submit that this Court has never made any such adjudication or determination, and will not do so now.

As we have already pointed out, it was never supposed that any of the place or indemnity lands of the Southern Pacific *Main*-Line Grant were involved in any of the previous litigations arising between the parties to this cause, until it was discovered upon the argument upon appeal in the case reported in 168 U. S. that the Southern Pacific might properly have claimed title under the Main-Line Grant to a small portion of the lands involved in that suit, but there treated only in their relation to the Branch-Line Grant. The decision of the Circuit Court of Appeals in the present cause, however, seems to show that no *place* lands of the Southern Pacific *Main*-Line Grant were in controversy in the case in 168 U. S., 1, for at page 2652 of the record it is said in the opinion of the Court below, in describing the lands involved in the case in 168 U. S., 1, after stating the kinds of lands covered by the *Branch*-Line Grant, that:

> "In addition to these lands [Branch-Line lands] there were lands within the primary

limits of the Atlantic and Pacific Grant and the *indemnity limits* of the Southern Pacific Main-Line Grant.

"It will be observed that the lands involved in these various suits embraced all the four classifications of land in conflict between the Atlantic and Pacific Grant and the Southern Pacific *Branch-Line Grant*, and that in the last case there is a classification of land in conflict between the Atlantic and Pacific Grant and the Southern Pacific Main-Line Grant."

It is very evident from the foregoing concise statement by the Circuit Court of Appeals in regard to the lands involved in the cases reported in 146 U. S. and 168 U. S., that that Court recognized that as a matter of fact there was no claim to *place* lands of the Southern Pacific *Main*-Line Grant involved therein, even though, as above stated, there were involved in the case in 168 U. S., 1, a small amount of land in respect to which a claim might have been (but was not) asserted under the provisions of the *Main*-Line Grant. That being so, it is not clear how it can be said that the question whether the place lands common to the Atlantic and Pacific and Southern Pacific *Main*-Line Grants belonged to the two railroads as tenants in common as of

the date of the granting act (which is the question now before the Court) has been, or could ever have been, adjudicated in any previous litigation between the parties to this cause.

The theory by which the Circuit Court of Appeals arrived at the conclusion that the prior decisions of this Court were a bar to any consideration by it of this question of a moiety in the common place lands of the Atlantic and Pacific and Southern Pacific *Main*-Line Grants seems to have been (if we have comprehended it rightly) that this Court considered the cases from the aspect of what title the United States had acquired to the lands in the Atlantic and Pacific grant by the Forfeiture Act of 1886, and that, having decided that the United States had acquired a title to a portion of the Atlantic and Pacific grant, it must be deemed to have so decided as to the balance of the land within the Atlantic and Pacific grant, although the conditions and circumstances in regard to the balance of the land were very different. In other words, the Court below has decided that, because this Court has held that X as against Y is entitled to lot A, therefore X as against Y is entitled to lot B.

As we understand it, the doctrine of *res judi-*

cata has never yet been extended so far as to hold that, where a man claims the possession and ownership of a tract of land under two separate titles, and an action of ejectment is brought against him as to a portion of the tract, and he sets up in his answer only one of his titles thereto and is defeated, he is thereafter estopped and in any way precluded in a subsequent action of ejectment in regard to another portion of the tract of land from setting up the other title under which he claims to own the land.

The rule was declared by Mr. Justice SHIRAS in the case of Roberts vs. Northern Pacific Railroad, 158 U. S., 1, 27, as follows:

> " It is apparent, therefore, that the q estion or point actually litigated in the State Court was not the same with those before the Federal Court, and hence, as the causes of action in the two courts were not the same, the judgment in the State Court, while it might determine the controversy between the parties to it as respects the pieces of land there in question, could not be conclusive in another action upon a different claim or demand."

In the much-cited case of Cromwell vs. County of Sac, 94 U. S., 351, it was held that a plaintiff who had been defeated in one action upon cou-

pons cut from county bonds because he failed to show that he was a *bona fide* holder for value, was not precluded from showing, in a subsequent action brought to recover on other coupons cut from the same bonds, that he was such *bona fide* holder for value of such other coupons. Mr. Justice FIELD, in the course of his opinion, said at pages 352, 353 and 356:

> "In considering the operation of this judgment, it should be borne in mind, as stated by counsel, that there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. * * *
>
> "But, where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action, to matters arising in a suit upon a different cause of action, the inquiry must always be

as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action. * * *

" *It is not believed that there are any cases going to the extent that, because in the prior action a different question from that actually determined might have arisen and been litigated, therefore such possible question is to be considered as excluded from consideration in a second action between the same parties on a different demand,* although loose remarks looking in that direction may be found in some opinions. *On principle, a point not in litigation in one action cannot be received as conclusively settled in any subsequent action upon a different cause, because it might have been determined in the first action.*"

In Last Chance Mining Co. vs. Tyler Mining Company, 157 U. S., 683, Mr. Justice BREWER said at page 687 :

" The law in respect to estoppel by judgment is well settled, and the only difficulty lies in the application of the law to the facts. The particular matter in controversy in the adverse suit was the triangular piece of ground, which is not the matter of dispute in this action. The judgment in that case is therefore not conclusive in this as to matters which might have been decided, but only as to matters which were in fact decided."

To the same effect are the following cases:

Davis vs. Brown, 94 U. S., 423.
Nesbit vs. Riverside Independent District, 144 U. S., 610.
Wilmington & Weldon R. R. Co. vs. Alsbrook, 146 U. S., 279, 302.
Keokuk and Western Railroad vs. Missouri, 152 U. S., 301, 314, 415.

The foregoing cases would seem to show conclusively that the failure to assert a defense in one action did not preclude the party from setting it up in a subsequent action between the same parties, if the matter in controversy in the subsequent action was different from that involved in the first action.

THE RELATION OF JOINT RESOLUTION OF 1870 TO THE LANDS COVERED BY MAIN LINE GRANT:

It is stated in the opinion of the Court below that the Southern Pacific Railroad Company at the time of the passage of the Act of July 27, 1866, was not authorized by its State charter to build a road from Mojave to the Needles, and that it did not obtain such authority from the State Legislature until April 4, 1870 (Record, p. 2659). The argument is then suggested, but is

in no way made the basis of any conclusion of the Court, that, as the State in 1866 had not authorized the Southern Pacific to build the road in the counties through which it afterward passed, therefore it was not in a position to take advantage of the land grant under the Act of Congress of 1866.

It is not at all clear why it should ever have been supposed that any authorization by a State Legislature was necessary in the case of a grant by the United States, but the question would seem to be put entirely at rest by the decision of this Court in *California vs. Pacific Railroad Co.*, 127 U. S., 1, 44, where it was distinctly held that the Act of the State Legislature of April 4, 1870, was entirely unnecessary, and that the franchise to build the road was fully conferred upon the Southern Pacific by the Act of Congress of July 27, 1866. At page 44 of the opinion, Mr. Justice BRADLEY, speaking for the Court, said:

> "An examination of the acts referred to in these findings shows that Congress authorized the Southern Pacific Railroad Company to connect with the Atlantic and Pacific Railroad, at such point near the boundary

line of the State of California, as it should deem most suitable for a railroad line to San Francisco; and, to aid in the construction of such a railroad line, Congress declared that the company should have similar grants of land, and should be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific. Like powers were also given to the Southern Pacific Railroad Company to construct a line of railroad from Tehachapa Pass, by way of Los Angeles, to the Texas Pacific road at the Colorado River (Fort Yuma). The Southern Pacific Company was not authorized by its original charter to extend its railroad to the Colorado River, as we already know by other cases brought before us, and as appears by the act of the State Legislature passed April 4, 1870, which assumed to authorize the company to change the line of its railroad so as to reach the eastern boundary line of the State; thus duplicating the power given to it by the Act of Congress (see the State act quoted in 118 U. S., p. 399). *This State legislation was probably procured to remove all doubts with regard to the company's power to construct such roads. It is apparent, however, that the franchise to do so was fully conferred by Congress*, and that franchise was accepted, and the roads have been constructed in conformity thereto."

It would seem unnecessary to argue this question further. Our proposition simply is that the question of whether the United States by the Forfeiture Act of 1886 acquired title to all the place lands common to the Atlantic and Pacific Grant and the Southern Pacific *Main*-Line Grant under the Act of 1866, or only to an undivided moiety thereof, has never in any way directly or indirectly been presented to any Court prior to the case at bar; that this Court, by its previous decisions in regard to the Southern Pacific *Branch*-Line Grant in 146 U. S. and 168 U. S., in which it held that said Forfeiture Act was not for the benefit of the Southern Pacific, never intended to be understood as saying that land not belonging to the Atlantic and Pacific, but being at the time of the act the property of the Southern Pacific, was forfeited by such act and restored to the public domain; and that we are not precluded by any prior decisions of this Court from having the question now presented for consideration examined and determined upon its merits.

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SECOND POINT.

The Southern Pacific Railroad Company is entitled to all lands within the PLACE limits of its MAIN-Line Grant, which also fall within the indemnity limits of the Atlantic and Pacific Grant.

The lands covered by this point are shown in red upon Map 2.

It would seem entirely unnecessary to discuss this question, as it has been squarely decided by this Court that when there are grants to two railroad companies under the same Act of Congress, and *place* lands under one grant conflict with *indemnity* lands under the other grant, the railroad company whose *place* lands fall within the overlap, is entitled to them exclusively, and the railroad company within the *indemnity* limits of which the lands are situated has no interest in or claim to them.

This question came up in Sioux City Railroad vs. Chicago Railway, 117 U. S., 406. In the court below the land within the *place* limits of the Sioux City road and the *indemnity* limits of the Milwaukee road had been divided equally between the two companies. This Court, how-

ever, reversed the decree below in this respect, and decided that the Sioux City road was entitled to all the land within its *place* limits which at the same time fell within the *indemnity* limits of the Milwaukee road. Mr. Justice MILLER, in speaking of the lands in controversy, said at page 409:

> "1. Of these, 63,796 $^{24}/_{100}$ acres are within the ten-mile limit of the Sioux City road, and *not* within the ten-mile limit of the Milwaukee road, though they are within its twenty-mile limit. * * *
>
> "The principles we have stated, and which were fully considered in The St. Paul Company vs. The Winona Company, exclude the Milwaukee Company in this case from invading the ten-mile limit of the Sioux City road to seek indemnity for losses by reason of lands within its own ten-mile limit previously disposed of. This 63,796$^{24}/_{100}$ acres, being odd sections within the ten-mile limit of the Sioux City road and not within the ten-mile limit of the Milwaukee road, belonged exclusively to the former, and the latter company had no interest in them. The decree is in that respect erroneous, and must be reversed, and all these lands given to the Sioux City Company."

Again in the same case, when the position was reversed, it was held that land within the *place* limits of the Milwaukee Company and the *indem-*

nity limits of the Sioux City Company belonged exclusively to the former company, and that the Sioux City Company had no interest therein. As to this it was said in the opinion at page 409:

> "2. Of the lands in controversy there were $33,071^{8}/_{100}$ acres within the ten-mile limit of the Milwaukee road, and *not* within the ten-mile limit of the Sioux City road, but within its twenty-mile limit, which, according to the ruling of the Circuit Court, were equally divided between the two companies. * * * For the same reasons which govern with regard to the $63,796^{24}/_{100}$ acres just disposed of, this part of the decree must be reversed and these $33,071^{8}/_{100}$ acres given to the Milwaukee Company."

One of the questions in the case of the Chicago, St. Paul, Minneapolis and Omaha Ry. Co., XI. L. D., 607, was as to the title of lands within the *primary* limits of the grant to the Wisconsin Central, which were also within the *indemnity* limits of the Omaha Company. The grants to the two railroads were contemporaneous, and under the Act of Congress of May 5, 1864 (13 U. S. Stat., 365). It was held by Secretary Noble, at page 609, as follows:

> "But as to the conflict between the primary limits of the Wisconsin Central and

> the twenty miles indemnity limits of the Omaha Company the rule is different. Both companies deriving their grant from the same act, the Wisconsin Central is clearly entitled to the land in question, without regard to either priority of location or construction. This rule is well settled."

It has already been held by the Interior Department that the very lands now in question were unaffected by the Forfeiture Act of 1886, as appears by Secretary Lamar's letter to Acting-Commissioner Stockslager, of November 25, 1887, in which he stated that the Commissioners had decided that:

> "The lands within the granted limits of the Southern Pacific main line and the indemnity limits of the Atlantic and Pacific, *are not affected by said act of forfeiture*" (Appendix, p. xx.).

If, prior to the Forfeiture Act of 1886, the Southern Pacific was entitled absolutely to all lands within its place limits which happened to conflict with lands within the indemnity limits of the Atlantic and Pacific Grant, and if the latter company had no interest in or claim to such lands whatever (as would seem to be well settled by the foregoing decisions) of course

the vested right of the Southern Pacific in such land could not be taken from it by an Act of Congress which forfeited and purported to forfeit only the rights and interests of the Atlantic and Pacific therein. If said land did not belong to the Atlantic and Pacific at the time of the Forfeiture Act and said company had no interest therein how can it be seriously argued that by such Forfeiture Act the land was taken away from the Southern Pacific and restored to the public domain?

It is idle for the counsel for the Government to say that the Southern Pacific is now estopped from raising this question upon the ground that it has been already adjudicated against it in the cases in 146 U. S. and 168 U. S.

There was no claim to *place* lands under the Southern Pacific *Main*-Line Grant involved in any of those cases, so that it was impossible that this matter should be adjudicated, and, furthermore, this Court has never in any case overruled its prior decisions upon the subject above referred to. Under the decision in the Sioux City Case in 117 U. S., 406, the Southern Pacific is unquestionably entitled to the *place* lands within its main-line grant which are in conflict

with the Atlantic and Pacific indemnity lands. This case has never been overruled or its doctrine modified, but the decision of the Court in that case is the law on that subject to-day. The Court neither in 146 U. S. nor in 168 U. S. has held the contrary, or in anywise modified the doctrine of that case. It must have completely reversed it if the question now before this Court upon this point is *res judicata* against the Southern Pacific Company. As was said in Holmes vs. Oregon & Cal. R. R. Co., 7 Sawy., 380, 399: "It cannot be supposed that it was the intention to overrule long established principles without even mentioning the cases in which they were elaborately discussed and established." We therefore respectfully submit that the plea of *res judicata* is without avail as to the claim that the Southern Pacific is entitled to all lands within the *place* limits of its main-line grant which happen to also fall within the indemnity limits of the Atlantic and Pacific Grant, and that we are entitled to have this question considered and determined without any regard to the prior decisions of this Court in 146 U. S. and 168 U. S.

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THIRD POINT.

The Southern Pacific Railroad Company is entitled to select as indemnity under its Main-Line Grant lands within the indemnity limits of that grant, notwithstanding that such lands are also within the indemnity limits of the Atlantic and Pacific Grant.

The lands involved under this point are shown in red on Map 3.

While it is established law that lands within the common primary limits of contemporaneous grants to two railroads which intersect or run in close proximity to one another are to be equally divided between them, it is at the same time equally well settled that in the case of the common indemnity lands of two such roads no rule of the sort applies, and as between them the one which makes the first selection from their common indemnity limits is entitled thereto.

In St. Paul Railroad vs. Winona Railroad, 112 U. S., 720, it was held that:

> "When the acts of Congress * * * are of the same date, or grants are made for different roads by the same statute * * * in case of lands to be selected in lieu of those within the limits of primary

> location, which have been sold or pre-empted before the location is made, where the limits of selection interfere or overlap, * * * neither priority of grant, nor priority of location, nor priority of construction, gives priority of right; *but this is determined by priority of selection when the selection is made according to law.*"

The doctrine that the title to indemnity lands remained in the United States until selection and approval has been recognized by this Court in an unbroken line of decisions.

In the case of New Orleans and Pacific Railway vs. Parker, 143 U. S., 42, it was said by Mr. Justice BREWER at page 57 that:

> "As to lands within the indemnity limits, it has always been held that no title is acquired until the specific parcels have been selected by the grantee and approved by the Secretary of the Interior."

In United States vs. Missouri, etc. Railway, 141 U. S., 358, Mr. Justice HARLAN again stated the rule as follows at page 374:

> "As to lands which may legally be taken for purposes of indemnity, the principle is firmly established that title to them does not vest in the railroad company for the benefit of which they are contingently granted, but, in the fullest legal sense, remains in the

United States until they are actually selected and set apart under the direction of the Secretary of the Interior specifically for indemnity purposes."

In Wisconsin Railroad Company vs. Price County, 133 U. S., 496, 512, Mr. Justice FIELD, who delivered the opinion of the Court, said:

> "Until the selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose; and the indemnity lands remained unaffected in their title. Until then the lands which might be taken as indemnity were incapable of identification; the proposed selections remained the property of the United States. The Government was, indeed, under a promise to give the company indemnity lands in lieu of what might be lost by the causes mentioned. But such promise passed no title, and, until it was executed, created no legal interest which could be enforced in the courts. The doctrine that until selection made no title vests in any indemnity lands has been recognized in several decisions of this Court."

In Barney vs. Winona, etc., Railroad, 117 U. S., 228, Mr. Justice FIELD, at page 232, said:

> "In the construction of land-grant acts in aid of railroads there is a well-established distinction observed between 'granted lands'

> and 'indemnity lands.' The former are those falling within the limits specially designated, and the title to which attaches when the lands are located by an approved and accepted survey of the line of the road filed in the Land Department, as of the date of the Act of Congress. The latter are those lands selected in lieu of parcels lost by previous disposition or reservation for other purposes, and the title to which accrues only from the time of their selection."

We have, therefore, this situation: If there had been no Forfeiture Act of 1886, the Southern Pacific would be in a position to select from the common indemnity limits of the two grants any land not theretofore selected by the Atlantic and Pacific. Such right was in existence at the date of said act of forfeiture, and the question is whether such right of the Southern Pacific was forfeited by an act which, so far as unselected Atlantic and Pacific indemnity lands were concerned must be deemed to have been passed solely to forfeit the right of the Atlantic and Pacific to make such selection.

It is unnecessary to elaborate at any great length this proposition. The mere statement of it would seem enough. On July 5, 1886, the Southern Pacific had an undisputed right as against the Atlantic and Pacific to select in-

demnity lands from the indemnity limits common to the two grants. Did the Southern Pacific lose that right on July 6, 1886, by an act which did not undertake to forfeit any rights of the Southern Pacific, but forfeited only rights of the Atlantic and Pacific?

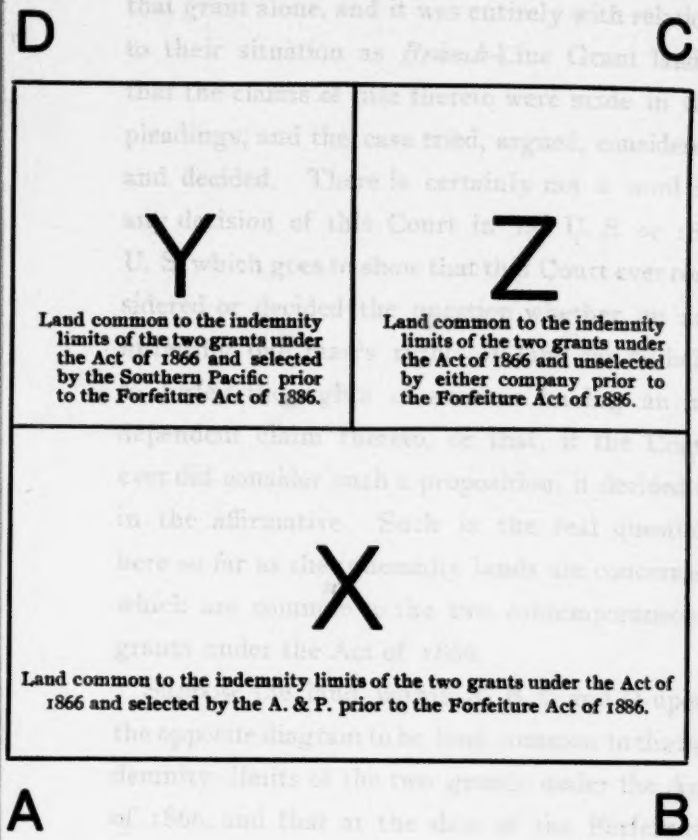
It can hardly be seriously argued that a forfeiture act is ever to be given a force and effect beyond its terms. It is construed as strictly as any penal act, and we have not yet found or been referred to any decision which says that an act which by its terms forfeits, and which was intended to forfeit, only A's rights in certain lands, can by any possibility be construed as forfeiting B's rights in such lands also.

It is impossible to say that there is any prior decision of this Court which is a bar to the raising of this question in the present case. There were no indemnity lands of the Southern Pacific *Main*-Line Grant involved in the cases in 146 U. S. It is true that a claim might have been set up under the indemnity clause of the Southern Pacific *Main*-Line Grant to a small amount of land which was in controversy in the case in 168 U. S., but no such claim was set up or adjudicated. The lands referred to were at

the same time embraced in the Southern Pacific *Branch*-Line Grant; they were claimed under that grant alone, and it was entirely with relation to their situation as *Branch*-Line Grant lands, that the claims of title thereto were made in the pleadings, and the case tried, argued, considered and decided. There is certainly not a word in any decision of this Court in 146 U. S. or 168 U. S. which goes to show that this Court ever considered or decided the question whether an act forfeiting one man's rights in land can be held to forfeit the rights of another having an independent claim thereto, or that, if the Court ever did consider such a proposition, it decided it in the affirmative. Such is the real question here so far as the indemnity lands are concerned which are common to the two contemporaneous grants under the Act of 1866.

Suppose the land within A, B, C and D upon the opposite diagram to be land common to the indemnity limits of the two grants under the Act of 1866, and that at the date of the Forfeiture Act section X thereof had been selected by the Atlantic and Pacific and such selection approved by the Secretary of the Interior, section Y by the Southern Pacific, and section Z by neither of

C
D
Z
Land common to the indemnity limits of the two grants under the Act of 1866 and selected by the Southern Pacific under the Act of 1866 and unselected by the other company prior to the Forfeiture Act of 1885.
Y
Land common to the indemnity limits of the two grants under the Act of 1866 and selected by the Southern Pacific prior to the Forfeiture Act of 1885.
X
B
A


D
C
Y
Land common to the indemnity limits of the two grants under the Act of 1866 and selected by the Southern Pacific prior to the Forfeiture Act of 1886.
Z
Land common to the indemnity limits of the two grants under the Act of 1866 and unselected by either company prior to the Forfeiture Act of 1886.
X
Land common to the indemnity limits of the two grants under the Act of 1866 and selected by the A. & P. prior to the Forfeiture Act of 1886.
A
B

the Companies. The result of the passage of the Act of 1886 would, we take it, have been to restore section X to the public domain, to have left section Y as it found it, and to have left section Z as it was so far as the rights therein of the Southern Pacific were concerned, but to have taken from the Atlantic and Pacific its right to ever exercise a right of selection in regard thereto.

In other words, the Forfeiture Act of 1886 forfeited only the land selected by the Atlantic and Pacific and the right of selection of the Atlantic and Pacific in the unselected land within the indemnity limits of its grant, and did not undertake or pretend to forfeit whatever right of selection the Southern Pacific had in such land.

FOURTH POINT.

The Southern Pacific Railroad Company is entitled to select from the place and indemnity lands of the Atlantic and Pacific grant, which have been actually restored to the public domain by the Act of 1886, any lands which are within its own indemnity limits, whether under its Main or Branch Line Grant, to supply losses within its Main and Branch line place limits.

This question is entirely apart from the right of the Southern Pacific (1) to a moiety of the

lands common to the place limits of the two grants under the Act of 1866, (2) to all the lands within its *Main*-Line place limits which also fall within the indemnity limits of the Atlantic and Pacific Grant, and (3) to select lands within the indemnity limits common to the two grants under the Act of 1866.

The point which we now make is that a railroad is entitled to select indemnity lands from any lands within its indemnity limits which at the time of selection are public lands.

The lands which are involved in the discussion of this branch of the case are:

1. Lands common to the indemnity limits of the Southern Pacific *Main*-Line Grant and either the place or indemnity limits of the Atlantic and Pacific Grant, which are shown in red on Map 4.

2. Lands common to the indemnity limits of the Southern Pacific *Branch*-Line Grant and either the place or indemnity limits of the Atlantic and Pacific Grant, which are shown in red on Map 5.

As we understand it, the case of Ryan vs. Railroad Co., 99 U. S., 382, is on all fours with the case at bar. In the Ryan case the land in controversy was within the indemnity limits of the

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grant in aid of the California and Oregon Railroad Company under the Act of July 25, 1866 (14 Stat., 239). At the time of the grant to the railroad company the land was not public land, but was claimed to be within the boundaries of a prior Mexican grant. Between the date of the granting act and of the selection of the land by the railroad, and about a year prior to such selection, this Court held the Mexican grant invalid, and the land was thereby restored to the public domain. It was decided that, whereas the rights of the company under such a grant, in respect to lands within *primary* limits, depend upon the status of the lands, as public lands or otherwise, at the date of the act and the time of definite location, the rights to lands within *indemnity* limits depend upon their status, as public lands or otherwise, at the date of selection.

The Court in the Ryan case especially distinguished it from Newhall vs. Sanger, 92 U. S., 761, where the land restored to the public domain was within the primary or granted limits of the company, and at the time of the grant thereof and its location was affected by an adverse claim, so that the railroad was not capable of taking title thereto. The Court in the Ryan case said at page 388:

> "It was within the secondary or indemnity territory where that deficiency was to be supplied. The railroad company had not and could not have any claim to it until specially selected, as it was, for that purpose. It was taken to help satisfy the grant to the extent that the odd sections originally given failed to meet its requirements. When so selected there was no Mexican or other claim impending over it. It had ceased to be *sub judice* and was no longer in litigation. It was as much 'public land' as any other part of the national domain. The patent gave the same title to the appellee that a like patent for any other public land would have given to any other party. The Mexican claim when condemned lost its vitality. From that time, as regards the future, it ceased to be a factor to be considered, and was in all respects as if it had never existed. In this state of things the appellee acquired its title, and that title is indefeasible."

So in the present case the land within the indemnity limits of the two Southern Pacific Grants, which was also embraced within both the primary and indemnity limits of the Atlantic and Pacific Grant, is now, since the Forfeiture Act of 1886 (except so far as the indemnity rights of the Southern Pacific therein are concerned), as much a part of the public domain

of the United States as any of the land of the United States. The right of the Southern Pacific to select such lands within its indemnity limits is entirely unaffected by the past history of that land. It is as if the grant to the Atlantic and Pacific "had never existed." The question is: What is that land now, when selection is sought to be made? Is it now public land or not? If it is now public land, it is of no importance whatever what parties in the past may have had claims or rights thereto, and it would seem absolutely immaterial whether the title to such land had formerly been claimed under a Mexican title thereafter declared void (as in the Ryan case), or under a grant of the United States subsequently declared to be forfeited, as in the case at bar.

In Alabama and Chattanooga R. R. Co., XX. L. D., 408, it appeared that the land in question had been taken under a homestead entry at the time the railroad made application to select the same as within its indemnity limits. The claim under the homestead entry was afterwards relinquished to the United States, "thus leaving the question wholly between the company and the United States" as to whether the railroad

was entitled to the land after its restoration to the public domain. Secretary Smith held that:

> "While the selection in question could not properly have been allowed at the time made by reason of Morton's entry, yet it now appears that such entry never ripened into a patent, but was relinquished to the United States. That being true, I see no reason why the selection may not now be approved."

In Southern Pacific R. R. Co., XXVI. L. D., 452, it was held by Secretary Bliss that:

> "Lands excepted from the grant to the Southern Pacific by homestead entries that were existing at the date when the grant took effect may be taken on behalf of said grant in lieu of mineral lands, if at the date of selection such entries have been canceled, and the lands are free from other claims or rights" (Syllabus).

Since the Ryan case the decisions of the Department of the Interior have been invariably to the effect that the status of lands within indemnity limits at the time of selection determines entirely the right of the railroad thereto.

In *Allers vs. Northern Pacific R. R. Co.*, 9 L. D., 452 (1899), Secretary Noble held that:

"A tract is not excluded from indemnity selection by reason of its being within the *primary limits* of another grant, if it is in fact vacant public land at date of selection and otherwise subject to such appropriation."

In *Northern Pacific R. R. Co. vs. Halvorson*, 10 L. D., 15 (1890), Secretary Noble held that:

"The right to *select indemnity* is not defeated by the fact that the land is within the *primary limits* of another grant, if the land is excepted from such grant and vacant public land at date of selection."

In *Missouri, K. & T. Ry. Co. vs. Beal*, 10 L. D., 504 (1890), Secretary Noble held that:

"Prior to selection, the right to indemnity lands is only a float; and the right acquired by selection is dependent upon the status of the lands at date of selection, and not at date of withdrawal."

In *Northern Pacific R. R. Co. vs. Moling*, 11 L. D., 138 (1890), Secretary Noble held that:

"The right to select a tract as indemnity under a railroad grant is not defeated by the mere fact that the selection is within the *primary limits* of another grant, if the tract is vacant public land at date of selection."

In *Hensley vs. Missouri, K. & T. Ry. Co.*, 12 L. D., 19 (1891), Secretary Noble held that:

> "The right to take a tract of land as indemnity is determined by its status at the date of selection, and not at date of withdrawal."

In *Northern Pacific R. R. Co. vs. Bass*, 13 L. D., 201 (1891), Acting Secretary Chandler held that:

> "The mere fact that a tract is within the *geographical* limits of another grant will not defeat the right to select the same as indemnity, if it is otherwise subject to selection."

In *Hastings and Dakota Ry. Co. vs. St. Paul, M. & M. Ry. Co.*, 13 L. D., 535 (1891), Acting Secretary Chandler held that

> "The right acquired by an indemnity selection is dependent upon the status of the land at date of selection."

In *St. Paul, M. & M. R. Co. vs. Munz*, 17 L. D., 288 (1893), Secretary Smith held that:

> "A tract of land within the *primary limits* of one grant and the *indemnity limits* of another, may be selected by the latter, on proper basis, if excepted from the grant to the former, and free from other claims at date of selection."

In *South and North Alabama R. R. Co. vs.*

Hall, 22 L. D., 273 (1896), Secretary Smith held that:

> "The status of indemnity lands at the date of selection, not definite location of the road, determines the right of the company thereto."

In *Southern Pacific Railroad Company vs. McKinley*, 22 L. D., 493 (1896), Secretary Smith held that:

> "The right of a railroad company to take a tract of land as indemnity must be determined by the status of such tract at the date of the application to select the same."

It may be said by counsel for the Government that Bardon vs. Northern Pacific Railroad, 145 U. S., 535, is in conflict with the doctrine of the Ryan case. We do not so understand it. In the Bardon case the land in controversy was within the *place* limits of the grant to the Northern Pacific Railroad Company. At the time the railroad took title to its place lands, the land involved was not public land, and was excepted from the grant for the reason that it had been taken up on a pre-emption claim, and the only question before the Court was whether, upon the restoration to the public domain of lands

within the place limits of a railroad grant, which were reserved at the time of the grant, such lands fell within the grant. It was then held that the land in question could not be acquired by the railroad as part of its *place* lands for the reason that it "was severed from the mass of public lands from which the grant to the Northern Pacific Railroad Company could alone be satisfied" by the terms of the granting act, which gave to the railroad for its place limits ten alternate sections of land "not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is definitely fixed." In other words, the Court held that at the time the road of the Northern Pacific was definitely fixed the land involved was pre-empted. It did not, therefore, then fall within the grant of *place* lands, and could not thereafter by reason of the cancellation of the pre-emption claim, because it was too late, the grant of the place lands by its terms only taking effect as of a certain time—viz., when the line of road was definitely fixed, which was prior to the cancellation of the claim.

It was at the same time held that the land so

restored to the public domain could not be taken by the railroad as indemnity land to make up a deficiency within the place limits for the sole reason that such deficiency could only be supplied from land within the limits expressly specified by Congress.

It is hard to conceive that anyone could seriously consider that the Bardon case in any way conflicts with the doctrine of the Ryan case above quoted. It may be that the counsel for the Government will make the same quotation from the decision in the Bardon case which he did in the court below, which was from page 545 as follows:

> "Not only does the land once reserved not fall under the grant should the reservation afterwards from any cause be removed, but it does not then become a source of indemnity for deficiencies in the place limits."

If counsel had quoted the succeeding sentence, he would have found the reason well stated as to why such lands could not be taken as a source of indemnity. It was that "*such deficiencies can only be supplied from lands within limits designated by the granting act or other law of Congress.*" That is to say, all lands which are taken to supply a deficiency in the place limits

of a railroad grant must be taken from the indemnity limits of that grant and from no other lands. The land involved in the Bardon case was not within such indemnity limits, and therefore could not be considered a "source of indemnity."

It would, therefore, seem very clear that this Court did not undertake to decide in the Bardon case that, if the pre-empted land in question had been within the indemnity limits of the Northern Pacific grant, and the pre-emption claim had been canceled subsequent to the granting act, the railroad would not have been entitled to select such land as indemnity land after its restoration to the public domain. The only possible inference from the case is that, if such question had been before it for determination, it would have decided that the railroad was entitled to make such selection, for the sole reason given by the Court why the land after restoration to the public domain could not be taken as indemnity land was that it was not situated within the indemnity limits granted to the railroad company, implying that, if it had been within such indemnity limits, the railroad company would have been entitled to it after

it had been restored to the public domain, although it was not public land at the time of the grant.

The Ryan case has since its decision always been referred to with approval by this Court and is now established law. The decisions of the Interior Department have ever since the Ryan case been in accord therewith. We, therefore, respectfully submit that the Southern Pacific is now entitled to select from within the indemnity limits of both Main and Branch Line Grants the lands of the Atlantic and Pacific which were restored to the public domain by the Forfeiture Act of 1886.

The Government will perhaps contend that the question of the right of the Southern Pacific under its *Branch*-Line Grant to select lands from its indemnity limits which were restored to the public domain by the Act of Forfeiture of 1886 has already been adjudicated against the Railroad Company, and that all discussion of such question is precluded by the decision of this Court in Southern Pacific Railroad vs. United States, 168 U. S., 1.

It is no doubt true that in the case referred to a part of the land in controversy was within the

indemnity limits of the Branch-Line Grant to the Southern Pacific, but in that case there was no discussion whatever of the question whether lands within the indemnity limits of a railroad grant, which were reserved at time of the grant, but subsequently restored to the public domain, could after such restoration be selected by the Railroad Company in lieu of losses within the primary limits. No such question was presented to the Court or considered by it, and the sole ground of the decision was that the Southern Pacific was estopped from raising the questions involved in the case because of the decisions of the Court reported in 146 U. S.

Turning to such decisions we find that there were no *indemnity* lands of the Southern Pacific involved therein. The cases in 146 U. S. related entirely to *place* lands of the Southern Pacific *Branch*-Line Grant and their conflict with Atlantic and Pacific place lands (146 U. S., 570) and indemnity lands (146 U. S., 615), and the question decided therein was that the Atlantic and Pacific had filed a good and sufficient map of definite location and had a title to its place lands as of the date of the granting act (Act of July 27, 1866), and that upon the forfeiture

of such lands the Southern Pacific could not take title thereto under its primary or place grant, as whatever it was entitled to thereunder was the land free from any claim at the time of filing the map of definite location of the road in accordance with the decision of this Court in Newhall vs. Sanger, 92 U. S., 761.

We have already quoted from Mr. Justice BREWER'S decision in 146 U. S., 615, 618 for the purpose of showing how careful the Court was to indicate that such decision was limited entirely to the *place* lands of the *Branch*-Line Grant as distinguished from the *indemnity* lands, and we now cite from it again as follows:

> "It must be borne in mind that these lands were in the granted limits of the Southern Pacific, and that they are not lands in respect to which that company would have a right of selection, and might defer the exercise of that right until such time as suited it. Being within the granted limits of the Southern Pacific, all its rights thereto vested at once, at the time of the filing of the map of definite location, and were not and could not be added to after that time; everything it could have in those lands it had then, and at that time there was an existing prospective right on the part of the Atlantic and Pacific Company to make a selection."

The question now before the Court, which was squarely decided in our favor in the case of Ryan vs. Railroad Co., 99 U. S., 382, was therefore never by any possible view of the matter before the Court in the cases in 146 U. S.; and, as the case in 168 U. S. was decided solely upon the ground that all questions therein had been determined in the cases in 146 U. S., it is obvious that the right of the Southern Pacific to select under its indemnity clause and from within its indemnity limits the Atlantic and Pacific lands restored to the public domain by the Act of 1886 has never been passed upon and decided by this Court, but that, on the contrary, a very similar, if not identical, right in favor of the Central Pacific was conceded by this Court in the Ryan case.

FIFTH POINT.

The decree of the Court below should be reversed.

L. E. PAYSON,
MAXWELL EVARTS,
Of Counsel for the Appellants.

APPENDIX.

Atlantic and Pacific Act (14 United States Statutes at Large, p. 292).

CHAPTER CCLXXVIII.

An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That John B. Brown, Anson P. Morrill, Samuel F. Hersey, William G. Crosby, Samuel E. Spring, Samuel P. Dinsmore, of Maine; N. S. Upham, Frederick Smyth, Onslow Stearns, S. G. Griffin, William E. Chandler, of New Hampshire; T. W. Park, H. H. Baxter, John Gregory Smith, A. P. Lyman, of Vermont; Walter S. Burges, William S. Slater, Stephen Harris, Thomas P. Shepard, of Rhode Island; William Merritt, Alexander H. Bullock, George L. Stearns, Genery Twitchell, Charles H. Warren, Chester W. Chapin, of Massachusetts; John Boyd, Robert C. Wetmore, John T. Wait, Cyrus Northrop, of Connecticut; Solon Humphreys, J. Bigler, Homer Ramsdell, Isaac H. Knox, John A. C. Gray, Daniel L. Ross, A. V. Stout, M. K. Jessup, R. E. Fenton, E. L. Fancher, J. C. Fremont, James Hoy, Jesse M. Bolles, Edward Gilbert, James P. Robinson, Oliver C. Billings, of New York; Charles Bachelor, John Edgar Thompson, Morton McMichael, T. Haskins Du Puy, Thomas A. Scott, Charles Rickettson, William Lyon, George W. Cass, Levi Parsons, of Pennsylvania; Charles Knap, J. L. N. Stratton, James B. Dayton, Robert F. Stockton, Alexander G. Cattell, A. W. Markley, of New Jersey; John W. Garrett, Charles J. M. Gwinn, Robert Fowler, Jacob Tome, Thomas M. Lana-

han, of Maryland; Charles J. Dupont, Henry Ridgley, Andrew C. Gray, Nat. Smythers, of Delaware; Bellamy Storer, George B. Senter, William Baker, Samuel Galloway, David Tod, Charles Anderson, Bird B. Chapman, Edward Sturgis, Israel Dille, of Ohio; Edwin Peck, William D. Griswold, James P. Luse, Samuel E. Perkins, Conrad Baker, of Indiana; Richard J. Oglesby, N. B. Judd, Samuel A. Buckmaster, D. L. Phillips, L. P. Sanger, of Illinois; Eber B. Ward, Omar D. Congar, Nathaniel W. Brooks, Alexander H. Morrison, of Michigan; Z. G. Simmons, Alexander Mitchell, J. J. Williams, G. A. Thompson, J. J. R. Pease, John H. Hersey, of Wisconsin; Henry A. Smith, Sherman Finch, William Mitchell, R. F. Crowell, L. F. Hubbard, E. F. Drake, of Minnesota; Lyman Cook, Platt Smith, Jacob Butler, Henry I. Reid, Hoyt Sherman, of Iowa; William G. Brownlow, of Tennessee; Thomas C. Fletcher, B. R. Bonner, John M. Richardson, Emil Pretorious, E. W. Fox, R. J. McElheny, Charles H. Howland, Madison Miller, George W. Fishback, T. J. Hubbard, George Knapp, Charles K. Dickson, A. G. Braun, G. L. Hewitt, P. A. Thompson, James W. Thomas, Charles E. Moss, Edward Walsh, A. R. Easton, Truman J. Horner, J. B. Eads, D. R. Garrison, W. A. Kayser, George P. Robinson, of Missouri; Thomas E. Bramlette, Benjamin Gratz, C. E. Warren, Lazarus W. Powell, John Mason Brown, Joshua Speed, of Kentucky; Solon Thatcher, Jacob Stotter, William B. Edwards, James G. Blunt, Robert McBratney, of Kansas; Harrison Hagaus, James Cook, Robert Crangle, Benjamin H. Smith, of West Virginia; Lorenzo Sherwood, A. J. Hamilton, of Texas; William Gilpin, Henry C. Leach, of Colorado; Phinneas Banning, Timothy G. Phelps, William B. Carr, Edward F. Beale, Fred. F. Lowe, Benj. B. Redding, B. W. Hathaway, Leonidas Haskell, Frederick Billings, of California; W. S. Ladd, J. R. Moores, Walter Monteith, John Kelly, B. F. Dowell, of Oregon; James L. Johnson, Henry Connelly, Franciscus Perea, of New Mexico; J. H. Mills, A. P. K. Safford, E. S. Davis, of Nevada; King S.

Woolsey, William H. Hardy, Coles Bashford, of Arizona; Henry D. Cook, of the District of Columbia; and all such other persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic, in deed and in law, by the name, style, and title of the "Atlantic and Pacific Railroad Company," and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and have a common seal. And said corporation is hereby authorized and empowered to lay out, locate and construct, furnish, maintain and enjoy, a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at or near the Town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route as shall be determined by said Company to a point on the Canadian River; thence to the Town of Albuquerque, on the River Del Norte, and thence by way of the Agua Frio, or other suitable pass, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route to the Colorado River, at such point as may be selected by said Company for crossing; thence by the most practicable and eligible route to the Pacific. The said Company shall have the right to construct a branch from the point at which the road strikes the Canadian River eastwardly along the most suitable route as selected to a point in the western boundary line of Arkansas, at or near the Town of Van Buren. And the said Company is hereby vested with all the powers, privileges and immunities necessary to carry into effect the purposes of this act as herein set forth. The capital stock of said Company shall consist of one million shares of one hundred dollars each, which shall in all respects be deemed personal property, and shall be transferable in such manner as the laws of said corporation shall provide. The persons hereinbefore named are hereby appointed

commissioners, and shall be called the "Board of Commissioners of the Atlantic and Pacific Railroad Company," and fifteen shall constitute a quorum for the transaction of business. The first meeting of said board of commissioners shall be held at the Turner Hall, in the City of St. Louis, on the first day of October, anno Domini eighteen hundred and sixty-six, or at such time within three months thereafter as any ten commissioners herein named from Missouri shall appoint, notice of which shall be given by them to the other commissioners by publishing said notice in at least one daily newspaper in the cities of Boston, New York, Cincinnati, Saint Louis, Memphis and Nashville, once a week for at least four weeks previous to the day of meeting. Said board shall organize by the choice from its number of a President, Vice-President, Secretary and Treasurer, and they shall require from said Treasurer such bonds as may be deemed proper, and may from time to time increase the amount thereof, as they may deem proper. The Secretary shall be sworn to the faithful performance of his duties, and such oath shall be entered upon the records of the company, signed by him, and the oath verified thereon. The president and secretary of said boards shall, in like manner, call all other meetings, naming the time and place thereof. It shall be the duty of said board of commissioners to open books, or cause books to be opened, at such times and in such principal cities or other places in the United States as they or a quorum of them shall determine, within twelve months after the passage of this act; to receive subscriptions to the capital stock of said corporation, and a cash payment of ten per centum on all subscriptions, and to receipt therefor. So soon as ten thousand shares shall in good faith be subscribed for, and ten dollars per share actually paid into the treasury of the company, the said president and secretary of said board of commissioners shall appoint a time and place for the first meeting of the subscribers to the stock of said company, and shall give notice thereof in at least one newspaper in each State in which sub-

n books have been opened, at least fifteen days previous to the day of meeting, and such subscribers as shall attend the meeting so called, either in person or by lawful proxy, then and there shall elect, by ballot, thirteen directors for said corporation; and in such election each share of said capital stock shall entitle the owner thereof to one vote. The president and secretary of the board of commissioners, and, in case of their absence or inability, any two of the officers of said board shall act as inspectors of said election, and shall certify, under their hands, the names of the directors elected at said meeting. And the said commissioners, treasurer and secretary shall then deliver over to said directors all the moneys, properties, subscription books and other books in their possession, and thereupon the duties of said commissioners and the officers previously appointed by them shall cease and determine forever, and thereafter the stockholders shall constitute said body politic and corporate. Annual meetings of the stockholders of the said corporation for the choice of officers (when they are to be chosen), and for the transaction of business, shall be holden at such time and place and upon such notice as may be prescribed in the by-laws.

SEC. 2. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby, granted to the said Atlantic and Pacific Railroad Company, its successors and assigns, for the construction of a railroad and telegraph as proposed, and the right, power and authority is hereby given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof. Said way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side-tracks, turn-tables and water stations; and the right of way shall be exempt from taxation within the Territories of the United States. The United States shall

extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act and acquired in the donation to the road named in the act.

SEC. 3. *And be it further enacted*, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections and not including reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided, further*, That

the railroad company receiving the previous grant of land may assign their interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided, further*, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided, further*, That the word "mineral," when it occurs in this act, shall not be held to include iron or coal: *And provided, further*, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said Atlantic and Pacific Railroad.

SEC. 4. *And be it further enacted*, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the Company to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every

twenty-five miles of said road is completed as aforesaid.

SEC. 5. *And be it further enacted*, That said Atlantic and Pacific Railroad shall be constructed in a substantial and workmanlike manner, with all the necessary draws, culverts, bridges, viaducts, crossings, turnouts, stations and watering places, and all other appurtenances, including furniture and rolling stock, equal in all respects to railroads of the first class when prepared for business, with rails of the best quality, manufactured from American iron. And a uniform gauge shall be established throughout the entire length of the road. And there shall be constructed a telegraph line of the most substantial and approved description, to be operated along the entire line: *Provided*, That the said company shall not charge the Government higher rates than they do individuals for like transportation and telegraphic service. And it shall be the duty of the Atlantic and Pacific Railroad Company to permit any other railroad which shall be authorized to be built by the United States, or by the Legislature of any Territory or State in which the same may be situated, to form running connections with it, on fair and equitable terms.

SEC. 6. *And be it further enacted*, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled "An Act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

SEC. 7. *And be it further enacted*, That the said Atlantic and Pacific Railroad Company be, and is hereby, authorized and empowered to enter upon, purchase, take and hold any lands or premises that may be necessary and proper for the construction and working of said road, not exceeding in width one hundred feet on each side of the line of its railroad, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turnouts, standing places for cars, depots, station-houses, or any other structures required in the construction and working of said road. And the said company shall have the right to cut and remove trees and other material that might, by falling, encumber its roadbed, though standing or being more than two hundred feet from the line of said road. And in case the owner of such lands or premises and the said company cannot agree as to the value of the premises taken, or to be taken, for the use of said road, the value thereof shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by either party to any court of record in any of the Territories in which the lands or premises to be taken lie; and said commissioners, in their assessment of damages, shall appraise such premises at what would have been the value thereof if the road had not been built. And upon return into court of such appraisement, and upon the payment into the same of the estimated value of the premises taken for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said company, which shall thereby acquire full title to the same for the purposes aforesaid. And either party feeling aggrieved at said appraisement may, within thirty days after the same has been returned into court, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act necessary and proper in the construction of its road. And said party appealing shall give bonds,

with sufficient surety or sureties, for the payment of any cost that may arise upon such appeal; and, in case the party appealing does not obtain a verdict more favorable, such party shall pay the whole cost incurred by the appellee, as well as his own, and the payment into court, for the use of the owner of said premises taken, at a sum equal to that finally awarded, shall be held to vest in said company the title of said lands, and of the right to use and occupy the same for the construction, maintenance and operation of said road. And in case any of the lands to be taken, as aforesaid, shall be held by an infant, femme covert, non compos, insane person, or persons residing without the Territory within which the lands to be taken lie, or persons subjected to any legal disability, the court may appoint a guardian, for any party under any disqualification, to appear in proper person, who shall give bonds, with sufficient surety or sureties, for the proper and faithful execution of his trust, and who may represent in court the person disqualified, as aforesaid, from appearing, when the same proceedings shall be had in reference to the appraisement of the premises to be taken for the use of said company, and with the same effect as has been already described; and the title of the company to the lands taken by virtue of this act shall not be affected or impaired by reason of any failure by any guardian to discharge faithfully his trust. And in case any party shall have a right or claim to any land for a term of years, or any interest therein, in possession, reversion or remainder, the value of any such estate, less than a fee simple, shall be estimated and determined in the manner hereinbefore set forth. And in case it shall be necessary for the company to enter upon any lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purposes of said railroad, and may institute proceedings, in the manner described, for the purpose of ascertaining the value of, and of acquiring a title to, the same; but the judge of the court hearing said suit shall determine

the kinds of notice to be served on such owner or owners, and he may in his discretion appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or nonappearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claims to damages against said company shall be barred.

SEC. 8. *And be it further enacted*, That each and every grant, right and privilege herein are so made and given to and accepted by said Atlantic and Pacific Railroad Company upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-eight.

SEC. 9. *And be it further enacted*, That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

SEC. 10. *And be it further enacted*, That all people of the United States shall have the right to subscribe to the stock of the Atlantic and Pacific Railroad Company until the whole capital named in this act of incorporation is taken up by complying with the terms of subscription.

SEC. 11. *And be it further enacted*, That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation.

SEC. 12. *And be it further enacted*, That the acceptance of the terms, conditions and impositions of this act by the said Atlantic and Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act and not afterwards, and shall be deposited in the office of the Secretary of the Interior.

SEC. 13. *And be it further enacted*, That the directors of said company shall make and publish an annual report of their proceedings and expenditures, verified by the affidavits of the president and at least six of the directors, a copy of which shall be deposited in the office of said Secretary of the Interior, and they shall, from time to time, fix, determine and regulate the fares, tolls and charges to be received and paid for transportation of persons and property on said road or any part thereof.

SEC. 14. *And be it further enacted*, That the directors chosen in pursuance of the first section of this act shall, so soon as may be after their election, elect from their own number a president and vice-president; and said board of directors shall, from time to time, and so soon as may be after their election, choose a treasurer and secretary, who shall hold their offices at the will and pleasure of the board of directors. The treasurer and secretary shall give such bonds, with such security, as the said board from time to time may require. The secretary shall, before entering upon his duty, be sworn to a faithful discharge thereof, and said oath shall be made a matter of record upon the books of said corporation. No person shall be a director of said company unless he shall be a stockholder, and qualified to vote for directors at the election at which he shall be chosen.

SEC. 15. *And be it further enacted*, That the president, vice-president and directors shall hold their offices for the period indicated in the by-laws of said company, not exceeding three years, respectively, and until others are chosen in their place, and qualified. In case it shall

so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, the corporation shall not for that excuse be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors. The directors, of whom seven, including the president, shall be a quorum for the transaction of business, shall have full power to make and prescribe such by-laws, rules and regulations as they shall deem needful and proper touching the disposition and management of the stock, property, estate and effects of the company, the transfer of shares, the duties and conduct of their officers and servants touching the election and meeting of the directors, and all matters whatsoever which may appertain to the concerns of said company; and the said board of directors may have full power to fill any vacancy or vacancies that may occur from any cause or causes from time to time in their said board. And the said board of directors shall have power to appoint such engineers, agents and subordinates as may from time to time be necessary to carry into effect the object of the company, and to do all acts and things touching the location and construction of said road.

SEC. 16. *And be it further enacted*, That it shall be lawful for the directors of said company to require payment of the sum of ten per centum cash assessment upon all subscriptions received of all subscribers, and the balance thereof at such times and in such proportions and on such conditions as they shall deem to be necessary to complete the said road and telegraph lines within the time in this act prescribed. Sixty days' previous notice shall be given of the payments required, and of the time and place of payment, by publishing a notice once a week in one daily newspaper in each of the cities of Boston, New York, Cincinnati, Saint Louis, Memphis and Nashville, and in case any stockholder shall neglect or refuse to pay, in pursuance of such notice, the stock held by such person shall be forfeited absolutely to the use of the company, and also any payment or payments that shall have been made on account thereof, subject to

the condition that the board of directors may allow the redemption on such terms as they may prescribe.

SEC. 17. *And be it further enacted*, That the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid or assistance which may be granted to or conferred on said company by the Congress of the United States by the legislature of any State, or by any corporation, person or persons, or by any Indian tribe or nation through whose reservation the road herein provided for may pass; and said corporation is authorized to hold and enjoy any such grant, donation, loan, power, franchise, aid or assistance, to its own use, for the purpose aforesaid: *Provided* that any such grant or donation, power, aid or assistance from any Indian tribe or nation shall be subject to the approval of the President of the United States.

SEC. 18. *And be it further enacted, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for.*

SEC. 19. *And be it further enacted*, That unless the said Atlantic and Pacific Railroad Company shall obtain *bona fide* subscriptions to the stock of said company to the amount of one million of dollars, with ten per centum paid, within two years after the passage of and approval of this act, it shall be null and void.

SEC. 20. *And be it further enacted*, That the better to accomplish the object of this act—namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in

working order, and to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military and other purposes—Congress may, at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend or repeal this act.

SEC. 21. *And be it further enacted*, That whenever in any grant of land, or other subsidies, made or hereafter to be made, to railroads or other corporations, the United States has reserved the right, or shall reserve it, to appoint directors, engineers, commissioners or other agents to examine said roads, or act in conjunction with other officers of said company or companies, all the costs, charges and pay of said directors, engineers, commissioners or agents shall be paid by the respective companies. Said directors, engineers, commissioners or agents shall be paid for said services the sum of ten dollars per day for each and every day actually and necessarily employed, and ten cents per mile for each and every mile actually and necessarily traveled, in discharging the duties required of them, which per diem and mileage shall be in full compensation for said services. And in case any company shall refuse or neglect to make such payments, no more patents for lands or other subsidies shall be issued to said company, until these requirements are complied with.

Approved, July 27, 1866.

Joint Resolution Concerning the Southern Pacific Railroad of California (16 United States Statutes at Large, p. 382.)

Be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the Commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act.

Approved, June 28, 1870.

SECTION 23 OF THE TEXAS PACIFIC ACT (16 UNITED STATES STATUTES AT LARGE, P. 579).

SEC. 23. That, for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions, as were granted to said Southern Pacific Railroad Company of California by the Act of July twenty-seven, eighteen hundred and sixty-six; *provided, however*, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company.

Approved, March 3, 1871.

Atlantic and Pacific Forfeiture Act (24 United States Statutes at Large, p. 123).

CHAPTER DCXXXVII.

An Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the lands, excepting the right of way and the right, power and authority given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots, machine-shops, switches, side-tracks, turntables and water stations, heretofore granted to the Atlantic and Pacific Railroad Company by an act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved July twenty-seventh, eighteen hundred and sixty-six, and subsequent acts and joint resolutions of Congress, which are adjacent to and coterminous with the uncompleted portions of the main line of said road, embraced within both the granted and indemnity limits, as contemplated to be constructed under and by the provisions of the said Act of July twenty-seventh, eighteen hundred and sixty-six, and the acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph, be, and the same are hereby, declared forfeited and restored to the public domain.

Approved July 6, 1886.

LETTER OF SECRETARY LAMAR AS PRINTED IN VI. L. D., 349.

RAILROAD GRANT—COMMON GRANTED LIMITS—SOUTHERN PAC. R. R. CO.

The grant to the Atlantic Pacific and Southern Pacific was made by the same act; and, under the provisions thereof, the said companies were each entitled to an undivided moiety of every odd section, not reserved from the grant, falling within the common granted limits of the respective roads, without respect to priority of location or construction, the right of each company relating back to the date of the grant.

The forfeiture of the grant to the Atlantic Pacific did not reinvest the Southern Pacific with the right, title and interest, of which it was divested by the definite location of the Atlantic Pacific, as the declaration of forfeiture expressly provided for the restoration of the forfeited lands to the public domain.

If the Southern Pacific elect to accept every other alternate odd-numbered section within the said common limits, the remaining odd-numbered sections may be immediately restored to the public domain.

SECRETARY LAMAR TO ACTING-COMMISSIONER STOCKSLAGER, NOVEMBER 25, 1887.

A rule was served upon the Southern Pacific Railroad Company to show cause why certain lands adjacent to and coterminous with the uncompleted portion of the main line of the Atlantic and Pacific Railroad Company, which are intersected by the line of the Southern Pacific Company, should not be restored to the public domain, Congress having declared a forfeiture of the grant to the Atlantic and Pacific Company as to the uncompleted portion of said road.

In considering said rule upon the answer of the company, you held :

(1) That, since the grants to both of said companies were made by the same act, the Southern Pacific "is only entitled (if at all) to, and cannot rightfully claim more than, a moiety of the lands" in the conflicting granted limits, and the recommendation is made by your office

"that every other alternate odd-numbered section (as sections 1, 5, 9, etc.) be now restored to the public domain, leaving the remaining odd-numbered sections in reservation for the present."

(2) That the lands within the granted limits of the Southern Pacific main line, and the indemnity limits of the Atlantic and Pacific, are not affected by said act of forfeiture, and they should continue in reservation for the present.

(3) That the lands within the granted limits of the Atlantic and Pacific, and the indemnity limits of the Southern Pacific, "could not have been selected as indemnity by the Southern Pacific" for the reason that, although said lands were withdrawn for the Southern Pacific Company, they fell within the granted limits of the Atlantic and Pacific, upon the subsequent definite location of its road.

(4) That the lands within the common indemnity limits of the Atlantic and Pacific and the Southern Pacific (both main and branch line) should still remain in reservation.

(5) That the Southern Pacific Railroad Company can have no valid claim to lands within the common granted limits of the Atlantic and Pacific and the Southern Pacific branch line, and that such lands should be at once restored; and,

(6) That the Southern Pacific Company has no right to any lands within the indemnity limits of the Atlantic and Pacific Railroad Company and the granted limits of the branch line of the Southern Pacific Company, for the reason that they are excepted from the grant to the latter company on account of the prospective right of the former company to select said lands for indemnity.

While the rule was pending before the Department, all lands withdrawn for indemnity purposes for the benefit of the Southern Pacific Railroad Company and the Atlantic and Pacific R. R. Company were restored to the public domain by order of August 15, 1887 (6 L. D., 84–92).

Counsel for the Southern Pacific Railroad Company have now filed an application protesting against any further action for the restoration of lands within granted limits, because: (1) The right of the company vested by definite location and final completion of the road to all lands mentioned in the Commissioner's report of March last, and that the question as to what particular lands within said limits are granted or excepted does not properly arise now, and there is no case before the Department requiring a decision. (2) Because the lands were withdrawn by the Act of Congress making the grant.

I see no reason for any further action by the Department upon this rule, except as to lands embraced within the common granted or primary limits of both roads.

A decision upon this question is rendered necessary in order that you may not be hindered or delayed in the adjustment of this grant under the general instructions issued from this Department of November 22, 1887.

The Act of Congress of July 27, 1866 (14 Stat., 292), granted to the Atlantic and Pacific Company

Every alternate section of public land, not mineral, designated by odd numbers, to the amount of * * * ten alternate sections of land per mile on each side of said railroad, whenever it passed through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated and free from pre-emption, or other claims or rights, at the time the line of said road is designated by a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other land shall be selected by said company in lieu thereof.

By the 18th section of said act the Southern Pacific road was authorized to connect with the Atlantic and Pacific road at a point near the boundary line of California, with a similar grant of land subject to all the conditions and limitations provided for in said act.

The grant contained a proviso "that if said route

shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted to the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

Here is a grant made by the same act to each road, of certain odd sections, to be designated by the filing of a map of definite location, and of the right to select other lands as indemnity for such odd sections within the granted lands as may have been granted, sold, reserved or occupied by homestead and pre-emption settlers prior to date of definite location.

Therefore, the filing of the map of definite location by either of the roads vested in such road the right and title to all the odd-numbered sections within the designated limits, and not within the exceptions referred to, and of the right to select other lands within the indemnity limits in lieu of lands so excepted. But as neither road was prohibited from constructing upon or near the general line of the other road, and it being evident from the proviso referred to that Congress did not intend to make a double grant for the same general line of road, that right and title was subject to be divested to the extent of a half interest in all odd-numbered sections that might fall within the common granted limits of both roads.

The Southern Pacific Company located its main line January 3, 1867, and by the terms of the grant its right immediately attached to every odd section of land, not of the character excepted by the grant, and within the ten-mile limit, subject, however, to be divested to the extent of a half-interest in every such odd section that might fall within the common limits of both roads, after the filing of the map of definite location by the Atlantic and Pacific Company.

The Atlantic and Pacific Company filed its map of definite location April 11, 1872, and April 16, 1874, showing that the primary or granted limits of said road overlapped and conflicted with the primary or granted

limits of a portion of the Southern Pacific road. As to the lands falling within the granted limits of both roads, the filing of the map of definite location by the Atlantic and Pacific Company, showing such conflict, immediately divested the Southern Pacific Company of the right and title to a half interest in all such odd sections, and from that moment and by that act the two companies became entitled to equal undivided moieties in such sections, without regard to the priority of location of the line of the road, or priority of construction, the right of each company relating back to the date of the grant. St. Paul and Sioux City R. R. Co. vs. Winona and St. Paul R. R. Co. (112 U. S., 720); Sioux City R. R. Co. vs. Chicago R. R. Co. (117 U. S., 406).

It cannot be questioned that these completed acts on the part of both roads vested in each of said companies the right and title to their respective interests in said conflicting limits, and determined the extent and quantity of the grant to each company along that portion of their respective roads. That is, the Atlantic and Pacific Company had a vested interest in every odd section within the limits of its grant of the character contemplated by the grant, and not in conflict with the limits of the other road, and an undivided half interest in all such sections within the conflicting limits of the two roads, and also the right to indemnity for such sections or interest in sections that may have been pre-empted, sold, reserved, etc., as provided for by the grant. The same right vested in the other road as to lands similarly situated within its limits, and those vested rights, titles and interests were existing at the date of the forfeiture of the grant to the Atlantic and Pacific Company. If the Atlantic and Pacific Company had no such title and interest in these lands, there would have been nothing to forfeit. That it did have such right, title and interest cannot be questioned.

But it is insisted that by the act of forfeiture the Southern Pacific Company was reinvested with the right, title and interest of which it was divested by the filing of the

map of definite location by the Atlantic and Pacific Company. I do not think this position tenable, even if the act declaring a forfeiture of those lands was silent as to the disposition to be made of them. There was no restoration to a right in the Southern Pacific Company, because that company had no right to restore. The act of forfeiture divested the Atlantic and Pacific Company of all right, title and interest in said lands, and reinvested the title in the Government.

Congress, by the act of forfeiture, could have invested the Southern Pacific Company with the entire interest in the lands held in common by the two roads, but that it was not the intention of Congress to dispose of this interest of the Atlantic and Pacific Company in that manner is evident from the act of forfeiture, which declares that

> All the lands * * * which are adjacent to and coterminous with the uncompleted portions of the main line of said road [Atlantic and Pacific], embraced within both the granted and indemnity limits, * * * be, and the same are hereby, declared forfeited and *restored to the public domain*.

The interest of the Atlantic and Pacific Company having been forfeited to the United States, the effect of said forfeiture was to make the United States a tenant in common with the Southern Pacific Company as to said lands, and, therefore, all the odd sections within said limits should still remain in reservation until a partition thereof has been made.

If said company is willing to accede to the plan suggested by your office, and take only every other alternate odd-numbered section within said common limits, I know of no objection to such a course being taken, and the remaining odd-numbered sections could be immediately restored to the public domain. If, however, the company declines to accept said plan, it will be necessary to take other steps looking to a partition of the lands granted.

You will, therefore, notify the Southern Pacific Company that it will be allowed a reasonable time to advise your office of its acceptance or rejection of the plan proposed, and if said plan is rejected you will report the same to this Department for further action.

It not being necessary, at present, to pass upon the remaining question presented in the rule, the papers are herewith returned.

FILED
JAN 23 1902
JAMES H. McKENNEY,
Clerk.

Nos. 18 & 24.

Brf. of Payson & Evarts for Pty.

Filed Jan. 23, 1902.

Supreme Court of the United States,

OCTOBER TERM, 1901.

Nos. 18 and 24.

THE SOUTHERN PACIFIC RAILROAD COMPANY *ET AL., Appellants,*

vs.

THE UNITED STATES, *Appellee.*

THE UNITED STATES, *Appellant,*

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY *ET AL., Appellees.*

On the Motion by the United States to Open and Correct Judgment.

REPLY OF THE SOUTHERN PACIFIC RAILROAD COMPANY.

L. E. PAYSON,
MAXWELL EVARTS,
Attorneys.

PRESS OF BYRON S. ADAMS.

Supreme Court of the United States,

OCTOBER TERM, 1901.

Nos. 18 and 24.

THE SOUTHERN PACIFIC RAILROAD COMPANY *ET AL., Appellants,*

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THE UNITED STATES, *Appellant,*

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY *ET AL., Appellees.*

On the Motion by the United States to Open and Correct Judgment.

REPLY OF THE SOUTHERN PACIFIC RAILROAD COMPANY.

It is difficult to attempt to make clearer the plain, explicit opinion of the Court, delivered by Mr. Justice Brewer on January 6th inst.

No point is made in the motion by the United States that the matter in litigation, as well as the distinct question presented for consideration by the Court here, are not accurately stated, viz: 1st, whether the Southern Pacific Railroad Company took any title to these lands by virtue of the Act of 1866 or subsequent legislation; and 2d, do the prior decisions of this Court control the determination of this case?

Answering the first question in the affirmative, on the merits of the case, and the second in the negative, it was perfectly clear that, considering the Atlantic and Pacific Forfeiture Act of 1886, the United States and the Southern Pacific hold each an undivided moiety in all the odd-numbered sections which lie within the conflicting place limits of the grant made to both companies by the Act of 1866.

The court below assumed to decide every possible phase of a contest arising out of this grant and the overlaps, not only as to lands within overlapping place limits but the eight different possible classifications of overlaps of "primary" and "indemnity" limits, pertaining to the location. (Rec., p. 2650.)

The court below took it upon itself to decide all possible claims to any lands in any of these classes, upon the grounds that the Southern Pacific neither took nor could take either title or interest in any lands of the United States under the Act of 1866, because, as held, first: that by its charter it had no right to build the line from Mohave to the Needles, and so could take nothing until the Joint Resolution of 1870; meanwhile, the Atlantic and Pacific, having filed its maps of definite location, it took title to *all* the grant as of 1866; and, second, that every possible question to arise out of the conflict of these two grants, of 1866 and 1871, had been adjudicated by this Court in the prior decisions referred to in 146 and 168 U. S.

Now, in 146 U. S., 570, the lands in controversy were lands in the common place limits of the Atlantic and Pacific and the Southern Pacific under the Act of 1871. In 146 U. S., p. 615, the lands were within the place limits of the Southern Pacific, and the indemnity limits of the Atlantic and Pacific, under the same act, in which case the sole question was, whether the proviso in the grant of 1871, which is, in substance, that the grant to the Southern

Pacific shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, had such an effect that the indemnity lands of the Atlantic and Pacific where crossed by the Southern Pacific were exempted from the grant to the Southern Pacific so that the *title* to none of *these* indemnity lands passed or could pass to the Southern Pacific.

In both cases solely a question of *title* passing or not passing, by the grant itself was presented ; none of the incidents of the grants, such as the right to indemnity or its extent, or where or how it should be exercised, were involved in or necessary to the decision of either case ; nor were they decided.

In case in 168 U. S., it is stated in the third paragraph in the opinion that the principal contention of the United States is that the lands in dispute are in the same category in every respect with those in controversy in U. S. *vs.* S. P. R. R. Co., 146 U. S., 570, and U. S. *vs.* Colton Marble and Lime Co. and U. S. *vs.* S. P. R. R. Co., 146 U. S., 615, and that so far as the question of title is concerned, the judgments in those cases have conclusively determined * * * the essential facts upon which the Government rests its present claim."

So that the only question was whether certain maps of the Atlantic and Pacific had been *conclusively* adjudicated to be maps of definite location of the line of road of that company in California ; and if so, was the question of title to the lands in place limits of both grants as between the Southern Pacific under the Act of 1871 and the Atlantic and Pacific under the Act of 1866, conclusively determined ?

So that in these prior decisions questions of *title* and *title only* by the grant direct have been involved.

But, as stated, the court below, taking the broadest possible view, held that every question to arise out of these grants, not only of 1871, but of 1866 as well ; not only as to grant

and title direct thereunder, but all incidentals as to indemnity as well, had been decided by this Court, and gave the Government a decree for all lands within the Atlantic and Pacific grant, both in granted as well as indemnity limits, upon both grounds, viz: that the Southern Pacific had no authority to take the grant till the Joint Resolution of 1870, and also that all these questions were *res adjudicata*.

This Court, in the opinion before us, holds that the Southern Pacific took jointly with the Atlantic and Pacific under the Act of 1866, and that its claim is "of equal force with that of the Atlantic and Pacific."

That is to say, the Southern Pacific has a land grant with the ordinary legal incidents of selection, contest, indemnity, etc., etc., to be adjusted and administered under the law and in the Land Department under its proper regulations as adjustment may progress, the question of the validity and extent of the grant being settled.

As stated in the opinion, "It is also unnecessary to determine the rights of the Southern Pacific to lands outside the conflict," *i. e.*, outside the common granted limits.

This motion attacks this paragraph in the opinion; the motion assumes, in the first paragraph, that the Southern Pacific is not entitled to any indemnity whatever as to its grant under the Act of 1866, by asking the Court to direct the Circuit Court to enter a decree in favor of the Government for all lands outside the 20-mile (granted) limits of the Southern Pacific under the Act of 1866.

No such idea has hitherto been suggested, argued or considered in any of this litigation,

No right to specific land as indemnity under a railroad land grant can arise until adjustment is being had—a loss in place shown and a selection made of land, the status of which, at date of selection, makes it subject thereto.

To ask this Court to direct a decree below, that the

Southern Pacific has no right of indemnity, to decree that it shall assert no right hereafter to any lands in common indemnity limits of a grant first declared to be valid and effectual, is certainly novel.

The Southern Pacific is not asserting any *right* to any specific lands in indemnity limits until establishing loss and making selection ; its rights thereto will be presented in each individual case, and be determined by the status then existing. Its rights in such case should not, cannot be foreclosed by such an order as is asked here.

At this point we notice specially some of the points in the printed motion here.

The statement on page 6 "that the Government was entitled to a decree for these lands were practically conceded by counsel for the Southern Pacific Company and is conceded by the Court by reason of its prior adjudication" is as far from accuracy as the writer could possibly get.

These 600,000 acres of land are all indemnity lands as such, all are outside the place limits of the Atlantic and Pacific grant, and a large proportion appertain as indemnity to the grant of 1866, the validity of which this Court has just affirmed.

The statement that "counsel for the Southern Pacific have practically conceded that the Government was entitled to a decree for these lands" is best met by the counter statement, that counsel for the Southern Pacific have not only not so conceded, but they have uniformly and strenuously insisted precisely the contrary ; they have uniformly insisted that the Company had the usual right of indemnity selection in these lands, the regularity of which will be passed upon when they shall be made.

Moreover, this Court has not "conceded by reason of its prior adjudications that the Government was entitled to a decree for these lands," because this Court has never made

a decision upon the question of the right to indemnity in either of these grants on the part of the Southern Pacific.

We have shown above accurately just what questions have been decided in prior litigation by this Court—question of technical *title* as such, and that only.

In the pending case—clearly, expressly—the decision is as to *title* and *title* alone, under the grant of 1866.

By what warrant does counsel for the Government assume to say that this Court, in this opinion, decides that while affirming the validity of the grant of 1866 to us, that it also decides that we have no right to indemnity privileges provided for in the act, and appertaining to the grant? and that it *should be* decreed that the Southern Pacific should be forever barred from asserting any right or claim thereto?

The Court has made proper disposition of these lands, in its order which directs the Court "to dismiss the bill as to all other lands without prejudice to any future suit or action."

Of course the decree of the Court below had to be wholly reversed; it was erroneous on every question with which it undertook to deal.

The point presented on page 10 of the motion here needs but a passing notice.

No one has ever claimed for the Southern Pacific that it "had a pre-existing right or title to such indemnity lands without having an approved selection."

Certainly it will claim that it has a "right to select such indemnity lands to supply deficiencies within the place limits."

It has never claimed that such right "confers a present right or title to any specific tract of land until selection."

Whenever its claims to indemnity lands are presented to the proper forum, they will be passed on in precisely the manner outlined by the Court in the opinion before us, "the adjustment of the grant is properly to be had in the

Land Department, subject of course if necessay to further contests in the courts."

Counsel for the Government assume still, as did the Circuit Court of Appeals, that every possible question growing out of these grant has been conclusively determined.

This Court puts it clearly : that the decrees in the several cases "are conclusive of the title to the property involved in them, no matter what claims or rights either party may have had and failed to produce, but as to property which was not involved in those suits they are conclusive only as to the matters which were actually litigated and determined."

The motion should be overruled.

Respectfully submitted,

L. E. PAYSON,
MAXWELL EVARTS,
Atty's for S. P. R. R. Co.

FILED
JAN 28 1901
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. ~~193~~ 24.

THE UNITED STATES,
Appellant,
against
THE SOUTHERN PACIFIC RAILROAD COMPANY (D. O. MILLS and HOMER S. KING, Trustees), and THE CENTRAL TRUST COMPANY OF NEW YORK,
Appellees.

CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR APPELLEES.

L. R. PAYSON,
MAXWELL EVARTS,
Of Counsel for Appellees.

C. G. Burgoyne, Walker and Centre Street, N. Y.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 185.

THE UNITED STATES,
Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY (D. O. MILLS and HOMER S. KING, Trustees), and THE CENTRAL TRUST COMPANY OF NEW YORK,
Appellees.

CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF OF APPELLEES.

The main question upon this cross-appeal is whether the decision of both courts below that all purchases from the Southern Pacific Railroad Company of the lands erroneously patented to

the Railroad by the Government were protected by the adjustment acts of March 3, 1887 (24 U. S., Stat., 556), and March 2, 1896 (29 U. S. Stat., 42), as construed by this court in the two Winona cases (165 U. S., 462 and 483) is right. As this is substantially the same question which was raised in the case of the United States vs. the Southern Pacific Railroad Company, which is No. 186 upon the present docket of this Court, and is to be argued with this case, we have considered it unnecessary to here repeat at length our argument presented in that case, and we repectfully refer the Court to the brief in No. 186 for our views upon the subject.

There is, however, an additional reason why this cross-appeal should be dismissed which is peculiar to this particular case. In subdivision IX. of the bill of complaint (Main Record in No. 152, p. 15), it is stated:

> "That the officers of the interior department have erroneously and without any authority of law caused to be issued to defendant Southern Pacific Railroad Company patents of the United States, in due form of law, for the tracts of land described in plaintiff's exhibit "A" hereto attached and made a part hereof."

Subsequently and in subdivision XII. of the bill the only prayer of the bill which seeks to cancel any patents from the Government to the Railroad is as follows:

> "Your orators pray that their title to said lands described in said Exhibit "A" hereto annexed may be quieted; that said pretended patents be vacated and decreed to be void."

Now, the only patents which the bill asks to have canceled are those conveying the lands described in Exhibit "A" to the bill, and it appears, from an examination of the record, that none of the land excepted from the operation of the final decree, upon the ground that it had been sold to *bona fide* purchasers (Record, p. 353 *et seq.*), is a part of the land described in Exhibit "A," attached to the complaint (see Appendix), and that, therefore, there is no prayer in the bill asking that the patents covering the land conveyed by the Railroad to *bona fide* purchasers should be canceled.

We take it that it is clear that the rights of *bona fide* purchasers in the land erroneously patented to the United States cannot be annulled and the patents for such land canceled by a bill seeking simply to remove a cloud upon the title

to land of the complainant, and that all relief seeking the cancellation of patents is necessarily limited to the patents which the bill specifically asks to be canceled.

As to this, the Circuit Court of Appeals said, in its opinion, at page 2671 of the main record, in No. 152:

> "We are further of the opinion that the bill of complaint did not call for the cancellation of the patents for the lands described. The bill alleged that the officers of the Interior Department had erroneously and without any authority of law caused to be issued to the defendant Southern Pacific Railroad Company patents of the United States in due form of law, for the tracts of land described in plaintiffs' Exhibit "A" attached to the complaint. The prayer of the bill was that plaintiffs' title to the lands described in Exhibit "A" should be quieted, and that the pretended patents for said lands be vacated and decreed to be void, etc. The lands excepted from the decree as having been sold by the Southern Pacific Company to *bona fide* purchasers who purchased the same in good faith and for value, are not described in exhibit "A," and were not therefore properly involved in the suit for the cancellation of patents."

In the case of Dick vs. Foraker, 155 U. S., 404, 414, it was said:

"The appellee then, seeks to have a cloud removed from his title when he holds no title whatever; for, of course, it follows that if the court was without jurisdiction the decree by it rendered was utterly void, and the sale, having been made under the decree, was equally vicious and wholly null. The rule in ejectment is that the plaintiff must recover on the strength of his own title, and not on the weakness of the title of his adversary. A like rule obtains in an equitable action to remove a cloud from a title; and title in the complainant is of the essence of the right to relief. In Frost v. Spitley, 121 U. S., 552, 556, we said: 'Under the jurisdiction and practice in equity independently of statute, the object of a bill to remove a cloud upon title, and to quiet the possession of real estate, is to protect the owner of the legal title from being disturbed in his possession, or harassed by suits in regard to that title; and the bill cannot be maintained without clear proof of both possession and legal title in the plaintiff.' Alexander v. Pendleton, 8 Cranch., 462; Peirsoll v. Elliott, 6 Pet., 95; Orton v. Smith, 18 How., 263; Crews v. Burcham, 1 Black., 352; Ward v. Chamberlain, 2 Black., 430. As observed by Mr. Justice GRIER in Orton v. Smith, 'Those only who have a clear, legal and equitable title to land, connected with possession, have any right to claim the interference of

a court of equity to give them peace or dissipate a cloud on the title.' 18 How., 265.

" The law of Arkansas authorizes a bill to remove a cloud on a title whether or not the complainant be in possession. Act of March 26, 1891, No. 74, Stats. of 1891, 132. By reason of this statute a bill in equity may be maintained in the Circuit Court of the United States by a person not in possession against another who is also out of possession. Holland v. Challen, 110 U. S., 15, 25. But this does not make the complainant's rights any the less dependent upon title in him nor does it put him in a position to have a cloud removed from a title which has no existence. In Frost v. Spitley, *supra*, it was said, p. 557:

" A statute of Nebraska authorizes an action to be brought 'by any person or persons, whether in actual possession or not, claiming title to real estate, against any person or persons who claim an adverse estate or interest therein, for the purpose of determining such estate or interest, and quieting the title to said real estate'. Nebraska Stat., Feb. 24, 1873; Rev. Stat., 1873, p. 882. . . . The requisite of the plaintiff's possession is thus dispensed with, but not the other rules which govern the jurisdiction of courts of equity over such bills. Under that statute, as under the general jurisdiction in equity, it is 'the title', that is to say, the legal title, to real estate, that is to be quieted

against claims of adverse estates or interests. In State v. Sioux City & Pacific Railroad, the Supreme Court of Nebraska said: 'Whatever the rule may be as to a party in actual possession, it is clear that a party not in possession must possess the legal title, in order to maintain the action'. 7 Nebraska, 357, 376. And in Holland v. Challen, above cited, this court said: 'Undoubtedly, as a foundation for the relief sought, the plaintiff must show that he has a legal title to the premises'. The necessary conclusion is, that Spitley, not having the legal title of the lots in question, cannot maintain his bill for the purpose of removing a cloud on the title. * * *

"There are other contentions urged, but they are all covered by what has been already said. They either arise from the erroneous postulate that the complainant's title is not void, but simply voidable, or are predicted on the equally unsound premise that one having no title can successfully invoke the aid of a court of equity to 'remove a cloud' from such non-existent title; that is to say, can ask a court to substract something from nothing."

In the case of United States vs. Winona and St. Paul Railroad, 67 Fed. Rep., 948, it was said at page 959:

"It is not difficult to determine whether the certificates issued in this case were void

or voidable when tested by these rules. Jurisdiction of the subject-matter is the power to deal with the general abstract question, to hear the particular facts in any case relating to this question, and to determine whether or not they are sufficient to invoke the exercise of that power. The test of jurisdiction is whether the tribunal has power to enter upon the inquiry, not whether its conclusion in the course of it is right or wrong. Foltz v. Railway Co., 8 C. C. A., 635, 60 Fed. 316, 318, and cases cited.

" When these certificates were issued, the Winona Railroad Company had undoubtedly applied to the land department for conveyances of the lands in controversy to the state for its benefit. These lands were a part of the public lands of the United States, the disposition of which had been intrusted to that department by the acts of congress which established it and defined the powers and duties of its officers. Moreover, the acts of congress under which the Winona Company claimed these lands expressly provided, as we have seen, that the secretary of the interior should indicate the lands granted under them in all cases. The conclusion is irresistible that these acts conferred the power and imposed the duty upon the officers of the land department to hear and determine the ultimate question whether or not the railroad company was entitled to

these lands under its grants, and to 'indicate' the lands granted by certificates or patents to the state. In no other way could they have discharged the duties these acts imposed upon them. In deciding this question they necessarily considered whether or not the railroad company had so far complied with the acts granting the lands that it had earned them, the character of the lands themselves, and the class to which they belonged, the time of the definite location of the line of the railroad, the homestead entries and preemption filings that were then upon the lands, the cancellation of all these entries and filings that had been made, and finally, the legal effect of all these and all other material facts upon the claim of the railroad company to receive the lands under the acts of congress. It now appears that they were mistaken as to the legal effect of these facts, but the question they decided was one which the acts of congress authorized and required them to decide—one which they were obliged to decide before they issued the certificates; and, although their decision and their conveyances evidenced by these certificates may be voidable, they are not absolutely void. *They are impregnable to collateral attack, and they conveyed the legal title to the lands to the state and its grantees.*"

Our proposition is simply that no relief can

be had under the bill of complaint in this suit as to any lands purchased from the railroad by *bona fide* purchasers, for the reason that the bill does not ask to cancel the patents conveying such land to the Railroad Company, but is limited in its relief in this regard to the land conveyed by the patents, which it specifically asks to have canceled. In other words, a patent of lands from the Government, however erroneously obtained, cannot be attacked collaterally, and can only be set aside in a direct proceeding for that purpose.

With this one additional suggestion, we respectfully submit the case upon our brief in the case of United States vs. Southern Pacific Railroad, No. 186, submitted and argued with this case.

L. E. PAYSON,
MAXWELL EVARTS,
Of Counsel for Appellees.

APPENDIX.

STATEMENT OF LANDS *excepted from Decree as held by bona fide Purchasers; showing Patents and Sales thereof, with references to pages in record in main suit No. 152.*

DESCRIPTION OF LANDS.				PATENTS.				SALES.				REMARKS.
SUBDIVISIONS.	Sec.	T.-N.	R.-W.	Br. Line.	M. Line.	Dates.	Tran.	Cont.	Dates.	Tran.		
Fracl. N. ½	7	7	18	27		28 Nov. '94	2576	11206	21 Sept. '92	2544		
N. ½	9	"	"	"		" " "	"	11207	" " "	"		
N. ½ of N. E. ¼ / S. W. ¼ of N. E. ¼	1	8	14		26	22 Dec. '94	2563	4955	7 Nov. '85	"		
N. W. ¼	"	"	"		"	" " "	"	4954	" " "	"		
N. W. ¼ of S. E. ¼	"	"	"		"	" " "	"	4956	" " "	"		
S. W. ¼	"	"	"		"	" " "	"	4957	" " "	"		
N. E. ¼	3	"	"		"	" " "	"	5028	3 Dec. '85	"		
N. W. ¼	"	"	"		"	" " "	"	5029	" " "	"		
S. E. ¼	"	"	"		"	" " "	"	5211	12 Jan. '86	"		Deeded.
S. W. ¼	"	"	"		"	" " "	"	5458	16 Mar. '86	"		
N. ½ of N. E. ¼	5	"	"		"	" " "	"	5044	9 Dec. '85	"		
N. ½ of N. W. ¼	"	"	"		"	" " "	"	4988	21 Nov. '85	"		
N. ½ of S. W. ¼	11	"	"		"	" " "	"	5019	1 Dec. '85	"		
S. E. ¼	"	"	"		"	" " "	"	5019	" " "	"		
N. ½	"	"	"		"	" " "	"	5019	" " "	"		
N. E. ¼	1	8	16	27		28 Nov. '94	2576	7628	30 June, '87	"		
N. W. ¼	"	"	"	"		" " "	"	7629	" " "	"		
S. E. ¼	"	"	"	"		" " "	"	7630	" " "	"		
S. W. ¼	"	"	"	"		" " "	"	7631	" " "	"		
N. E. ¼	3	"	"	"		" " "	"	7684	" " "	"		
N. W. ¼	"	"	"	"		" " "	"	7685	" " "	"		
S. E. ¼	"	"	"	"		" " "	"	7686	" " "	"		
S. W. ¼	"	"	"	"		" " "	"	7687	" " "	"		
N. E. ¼	5	"	"	"		" " "	"	7688	" " "	2545		
N. W. ¼	"	"	"	"		" " "	"	7689	" " "	"		
S. E. ¼	"	"	"	"		" " "	"	7690	" " "	"		
S. W. ¼	"	"	"	"		" " "	"	7691	" " "	"		
All	11	"	"	"		" " "	"	7500	31 May, '87	"		
N. W. ¼	13	"	"	"		" " "	"	8406	28 Sept. '87	"		
S. E. ¼	"	"	"	"		" " "	"	8407	" " "	"		
Fracl. N. ½	19	9	14		22	10 July, '94	1989	5041	8 Dec. '85	"		
S. E. ¼	"	"	"		"	" " "	"	5042	" " "	"		
S. W. ¼	"	"	"		"	" " "	"	5043	" " "	"		
E. ½	21	"	"		"	" " "	"	4593	9 May, '85	"		
W. ½	"	"	"		"	" " "	"	4672	15 June '85	"		
All	23	"	"		"	" " "	"	4576	5 May, '85	"		
All	25	"	"		"	" " "	"	4533	16 April '85	"		
N. ½	27	"	"		"	" " "	"	4603	12 May, '85	"		
N. ½	29	"	"		"	" " "	"	4985	21 Nov. '85	"		
S. ½	"	"	"		"	" " "	"	4986	" " "	"		
E. ½	31	"	"		"	" " "	"	4987	" " "	"		
N. W. ¼	"	"	"		"	" " "	"	4998	25 Nov. '85	2546		Deeded.
S. W. ¼	"	"	"		"	" " "	"	4999	25 Nov. '85	"		
N. ½	33	"	"		"	" " "	"	5026	3 Dec. '85	"		Deeded.
S. ½	"	"	"		"	" " "	"	5027	3 Dec. '85	"		

Description of Lands.				Patents.				Sales.			Remarks.
Subdivisions.	Sec.	T. N.	R. W.	Br. Line.	M. Line.	Dates.	Trac.	Cont.	Dates.	Trac.	
All	35	9	14		22	10 July, '94	1989	5018	3 Dec. '85	2546	Deeded.
N. E. ¼	17	9	15	"	"	" " "	"	9654	1 June, '88	"	
S. E. ¼	"	"	"	"	"	" " "	"	9655	" " "	"	
N. W. ¼	"	"	"	"	"	" " "	"	7678	30 June, '87	"	
S. W. ¼	"	"	"	"	"	" " "	"	7679	" " "	"	
N. E. ¼	19	"	"	"	"	" " "	"	7674	" " "	"	
N. W. ¼	"	"	"	"	"	" " "	"	7675	" " "	"	
S. E. ¼	"	"	"	"	"	" " "	"	7676	" " "	"	
S. W. ¼	"	"	"	"	"	" " "	"	7677	" " "	"	
S. E. ¼	21	"	"	"	"	" " "	"	7758	11 July, '87	"	Deeded.
S. W. ¼	"	"	"	"	"	" " "	"	7759	" " "	"	Deeded.
N. ½	23	"	"	"	"	" " "	"	7733	9 July, '87	"	
S. ½	"	"	"	"	"	" " "	"	7734	" " "	"	
N. E. ¼	25	"	"	"	"	" " "	"	7620	28 June, '87	"	
N. W. ¼	"	"	"	"	"	" " "	"	7621	" " "	"	
S. E. ¼	"	"	"	"	"	" " "	"	6707	11 April, '87	"	Deeded.
S. W. ¼	"	"	"	"	"	" " "	"	6708	" " "	"	
N. ½	27	"	"	"	"	" " "	"	7735	9 July, '89	"	Deeded.
S. ½ of S.W.¼—S. E. ¼	"	"	"	"	"	" " "	"	7736	" " "	"	Deeded.
N. E. ¼	35	"	"	"	"	" " "	"	7828	16 July, '87	"	
N. ½ of N. W. ¼	"	"	"	"	"	" " "	"	7737	9 July, '87	"	
N. E. ¼	13	9	16		"	" " "	"	7634	30 June, '87	"	
N. W. ¼	"	"	"		"	" " "	"	7635	" " "	"	
S. E. ¼	"	"	"		"	" " "	"	7636	" " "	"	
S. W. ¼	"	"	"		"	" " "	"	7637	" " "	"	
N. E. ¼	19	"	"	27		28 Nov. '94	2576	7638	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7639	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7640	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7641	" " "	"	
N. E. ¼	21	"	"	"		" " "	"	7642	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7643	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7644	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7645	" " "	"	
N. ½	23	"	"		22	10 July, '94	1989	9663	6 June, '88	"	Deeded.
N. E. ¼ of S. E. ¼	"	"	"		"	" " "	"	9621	21 May, '88	"	
E. ½ of N. E. ¼	25	"	"		27	27 July, '95	2585	7646	30 June, '87	"	
W. ½ of N. E. ¼	"	"	"	27		28 Nov. '94	2576	7646	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7647	" " "	"	
N. E. ¼ of S. E. ¼	"	"	"		27	27 July, '95	2585	7648	" " "	"	
N. W. ¼ of S. E. ¼	"	"	"	27		28 Nov. '94	2576	7648	" " "	"	
S. ½ of S. E. ¼	"	"	"	"		" " "	"	7648	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7649	" " "	2547	
N. E. ¼	27	"	"	"		" " "	"	7650	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7651	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7652	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7653	" " "	"	

Description of Lands.				Patents.				Sales.			Remarks.
Subdivisions.	Sec.	T. N.	R. W.	Br. Line.	M. Line.	Dates.	Tran.	Cont.	Dates.	Tran.	
N. W. ¼	29	9	16	27		28 Nov. '94	2576	7654	30 June, '87	2547	
S. W. ¼	"	"	"	"		" " "	"	7655	" " "	"	
N. E. ¼	"	"	"	"		" " "	"	9339	10 Feb. '88	"	
S. E. ¼	"	"	"	"		" " "	"	9340	" " "	"	Deeded.
N. ½ of S. W. ¼	13	8	16	"		" " "	"	8408	28 Sept. '87	2545	
S. E. ¼ of S. W. ¼	"	"	"	"		" " "	"	8408	" " "	"	
All	15	"	"	"		" " "	"	4538	21 April, '85	"	
N. E. ¼	23	"	"	"		" " "	"	7632	30 June, '87	"	
N. W. ¼	"	"	"	"		" " "	"	7633	" " "	"	
S. E. ¼—Lots 1, 2, 3, 4	9	8	17	"		" " "	"	3596	24 May, '84	"	Deeded.
Lot 1	27	"	"	"		" " "	"	3596	" " "	"	do.
All Fracl	29	"	"	"		" " "	"	3596	" " "	"	do.
All Fracl	31	"	"	"		" " "	"	3596	" " "	"	do.
All	33	"	"	"		" " "	"	3596	" " "	"	do.
All Fracl	35	"	"	"		" " "	"	3596	" " "	"	do.
S. W. ¼ of S. W. ¼	13	8	18	"		" " "	"	11330	18 Jan. '94	"	
Lots 1, 2, 3	"	"	"	"		" " "	"	11330	" " "	"	
N. E. ¼	15	"	"	"		" " "	"	11132	11 April, '92	"	
N. W. ¼	"	"	"	"		" " "	"	11133	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	11134	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	11135	" " "	"	
S. E. ¼ of S. E. ¼	17	"	"	"		" " "	"	11378	12 April, '95	"	
W. ½ of S. E. ¼	"	"	"	"		" " "	"	11378	" " "	"	
E. ½	21	"	"	"		" " "	"	10955	25 Jan. '92	"	
S. W. ¼	"	"	"	"		" " "	"	11148	13 May, '92	"	
All	23	"	"	"		" " "	"	10955	25 Jan. '92	"	
N. ½ of S. E. ¼	7	9	13		22	10 July, '94	1989	5057	11 Dec. '85	"	Deeded.
S. W. ¼—N. ½	"	"	"		"	" " "	"	5057	11 Dec. '85	"	Deeded.
W. ½ of N. W. ¼	9	"	"		"	" " "	"	6025	10 Nov. '86	"	
N. W. ¼ of S. E. ¼	17	"	"		"	" " "	"	4472	24 Mch. '85	"	
W. ½ of N. E.—W. ½	"	"	"		"	" " "	"	4472	" " "	"	
All	19	"	"		"	" " "	"	4493	31 Mch. '85	"	
N. E. ¼ of N. W. ¼	31	"	"		"	" " "	"	4494	" " "	"	
W. ½ of N. W. ¼	"	"	"		"	" " "	"	4494	" " "	"	
N. W. ¼ of S. W. ¼	"	"	"		"	" " "	"	4494	" " "	"	
N. E. ¼	31	9	16	27		28 Nov. '94	2576	8772	12 Nov. '87	2547	Deeded.
S. W. ¼	"	"	"	"		" " "	"	7657	30 June, '87	"	
N. E. ¼	33	"	"	"		" " "	"	7658	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7659	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7660	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7661	" " "	"	
N. E. ¼	35	"	"	"		" " "	"	7662	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7663	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7664	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7665	" " "	"	
Lots 1, 2, 3, 4	33	9	17	"		" " "	"	3596	24 May, '84	"	Deeded.

105

Supreme

Filed

Southern Pacific Railroad Company, et al., Appellants,
vs.
The United States, Appellee.

No. 105.

The United States, Appellant,
vs.
Southern Pacific Railroad Company, et al., Appellees.

No. 185.

Appeal and Cross Appeal from the United States Circuit Court of Appeals, Ninth Circuit.

Brief for United States.

JOSEPH H. CHOATE,
Special U. S. Attorney.

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SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1900.

Nos. 152 (185)

SOUTHERN PACIFIC RAILROAD COMPANY, et al., *Appellants,* vs. THE UNITED STATES, *Appellee.*	*No. 152.*
THE UNITED STATES, *Appellant,* vs. SOUTHERN PACIFIC RAILROAD COMPANY, et al., *Appellees.*	*No. 185.*

Appeal and Cross Appeal from the United States Circuit Court of Appeals, Ninth Circuit.

Brief for United States.

Statement of the Case.

This suit in equity represents a continuation of the controversy between the United States and the Southern Pacific Railroad Company, concerning the title of

the United States to the forfeited Atlantic and Pacific grant in California, the title to which, as the Government contends, has been in former suits adjudged in favor of the United States.

Like the former cases this suit is brought to quiet the title of the United States, and to vacate patents so far as erroneously issued by the Interior Department, and for general equitable relief.

The rights of the United States to the forfeited Atlantic and Pacific grant, have been so often before the courts and so thoroughly considered, it is believed that a comparison of the issues presented in the present appeals with the issues and adjudications in the former cases, will show to the court that not only are the questions, claims, and rights of the respective parties *res adjudicata*, but that upon the merits the law is clearly for the Government.

See

United States vs. Southern Pacific Railroad Company, 146 U. S., 570.

United States vs. Southern Pacific Railroad Company, 146 U. S., 615.

Southern Pacific Railroad Company vs. United States, 168 U. S., 1, 66.

Southern Pacific Railroad Company vs. United States, 69 Fed., 47 (C. C. A.).

In the present case the Circuit Court adjudged that the United States was entitled to a decree quieting its title to the lands in controversy, being all the lands within the thirty-mile limits of the Atlantic and Pacific grant in California, except those covered by pre-

vious suits and except certain tracts dismissed from suit by the Government, and except certain tracts of land which the court adjudged had been sold by the Southern Pacific Railroad Company to third parties prior to commencement of this suit and as to which lands so sold the court adjudged that the United States take nothing. (86 Fed., 962, record 365, 336.)

Both parties having appealed to the Circuit Court of Appeals, that court affirmed the decree of the Circuit Court upon both appeals. (98 Fed,. 27, record 2630, 2672.)

Both parties have appealed from the decree of the United States Circuit Court of Appeals.

The grant to the Atlantic and Pacific Railroad Company was made by the act of Congress of July 27, 1866 (14 U. S., Stat. 292), and the grant of lands in California was for ten alternate sections of public land not reserved, claimed or otherwise disposed of *on each side* of the line of route of the railroad to be designated by the company by a plat filed in the Interior Department; also a right to indemnity for losses in place limits within a further limit of ten miles on each side, which made the granted limits embrace the alternate sections for twenty miles on each side and the indemnity for ten miles further, making altogether thirty miles on each side. (see section 3.)

The line of route of the Atlantic and Pacific described in the charter was from the town of Springfield, in Missouri, thence by Albuquerque, New Mexico, thence along or near the 35th parallel of latitude, "as near as may be found most suitable for a railway route

to the Colorado river at such point as may be selected by said company for crossing, and thence by the most practicable and eligible route to the Pacific."

The western terminus on the Pacific was not fixed, and the natural routes open to exploration were from the Colorado to the Bay of San Diego, to the Pacific at San Pedro, and the route by way of Soledad Pass to the Pacific at San Buenaventura. In the year of 1872, the company selected the latter route, and in that year filed its map of definite location upon that line from Needles on the Colorado to Ventura, by maps filed in sections, three maps embracing that part of the line in California between Needles and Ventura, and this completed the entire line of definite location from Springfield, Mo., to the Pacific.

The maps of the Atlantic and Pacific east of the Colorado river are not printed, it being stipulated that they were sufficient. [rec. *2615*.]

Section 6 of the act provided for a withdrawal of lands for the benefit of the company after the *general route* should be fixed.

When the Atlantic and Pacific filed its map of definite location in 1872, the Commissioner of the General Land Office withdrew and reserved for the benefit of the company all of the odd sections falling within thirty miles on each side of the line of route. [rec. 623, 624, 877, 878.]

The grant to the Atlantic and Pacific was *in praesenti* upon a condition subsequent that not less than fifty miles of road should be constructed each year after the second, and that the whole road should be completed by July 4, 1878. (see section 8.)

The grant further provided that if the company made any breach of the conditions and allowed the same to continue for upwards of one year, that the United States might do any and all acts and things needful and necessary to insure speedy completion of said road. (see section 9.) And Congress also reserved the right to alter, amend or repeal the act.

The Atlantic and Pacific Company by the year 1886 had failed to construct any railroad in California, and by the act of Congress of July 6, 1886 (24 Stat., 123), all lands and rights to lands in California were forfeited *and restored to the public domain.*

Atlantic and Pacific Railroad vs. Mingus, 165 U. S., 413.

United States vs. Southern Pacific, 146 U. S., 570, and 168 U. S., 1–66.

The Southern Pacific Railroad Company of California was authorized by Section 18 of the Atlantic and Pacific act to connect with the Atlantic and Pacific Railroad "at such point near the boundary line of the state of California as they shall deem most suitable for a railroad line to San Franscisco and * * * to aid in its construction shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for." (see appendix.)

When this grant was made (1866) the Southern Pacific Railroad Company, a California corporation, was authorized and empowered by its articles of incorporation to construct a single line of railroad described in its charter as follows:

"from some point on the Bay of San Francisco in

the state of California, through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the town of San Diego, thence eastward through the said county of San Diego to the eastern line of the state of California." [rec. 526.]

In 1867 the Southern Pacific Company attempted to file a map of *general route* in the Interior Department, showing a line of railroad *from San Francisco via Mojave to the Colorado river at Needles*, but the Interior Department, after a long controversy, determined that this map was upon a totally unauthorized route not authorized by the charter of the company, the laws of California, or contemplated by the act of Congress.

The law required and contemplated that the Southern Pacific Railroad should be constructed upon the shortest practicable route to connect with the Atlantic and Pacific Railroad, but upon an authorized route.

The statute did not designate which "boundary line of California" was meant, but the nearest boundary line was the western or southern.

The charter of the Southern Pacific Railroad called for a line of railroad down the coast from San Francisco through Los Angeles county to San Diego, so that the route which was contemplated by Congress was to connect with the Atlantic and Pacific Railroad upon either the *southern* or *western* boundary line of the state.

Not only was that the *nearest* and most practicable route and the *only route authorized by the Southern Pacific charter* but to construct *to the eastern boundary line* involved the paralleling of the Atlantic and Pa-

cific Railroad coming from the east for a distance of more than 200 miles.

And it was held by three successive Secretaries of the Interior that the line shown upon this map was not authorized by the act of Congress or by the charter of the Southern Pacific Company.

Thereupon the Southern Pacific procured the passage of an act of the Legislature of California, approved April 4, 1870, authorizing the company to "change the line of its railroad so as to reach the *eastern* boundary line of the state of California by such route as the company shall determine to be the most practicable." * * * And the act further authorized the company to accept such grants as had been or might thereafter be made by Congress. (see appendix.)

Thereafter and on June 28, 1870, Congress passed a joint resolution by which the Southern Pacific was authorized to construct its road "as near as may be on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, 1867." (From San Francisco *via* Mojave to the Colorado at Needles.) And further provided that as each section of the road should be constructed patents to lands should issue "to the extent and amount granted to said company by said act of July 27, 1866, *expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act.*"

This resolution or act accomplished several results. It authorized the Southern Pacific Company to construct a railroad "as near as may be on the route indicated by the map filed January 3, 1867," from San Francisco via Mojave to Needles.

It expressly made to that company a grant of lands upon that line to the extent and upon the same terms made to the Southern Pacific Company by the act of July 27, 1866.

It expressly reserved the rights of settlers "*together with the other conditions and restrictions provided for in the third section of said act.*"

All of these favorable provisions of the joint resolution of 1870 were accepted by the Southern Pacific Company and acted upon by it, but one of the provisions of this act of 1870, was that it should be *subject to the terms and conditions of section 3, of the act of 1866*, which expressly provided that the grant shall be only of lands " not *reserved*, sold, granted or otherwise appropriated, and free from preëmption or *other claims* or rights *at the time the line of said route is designated by a plat.* * * *"

The Southern Pacific pursuant to the resolution of 1870 constructed that part of the railroad from Mojave to Needles on the Colorado river in the year 1885, and at that time filed in the Interior Department in sections, its maps showing the line of route as so constructed and located by the company, and the land grant to the company was adjusted upon those maps of constructed road. This is known as the Southern Pacific " main line grant." The Southern Pacific never filed any other maps than the general route map of 1867 and the sectional maps of constructed road, but that part of the road between Tres Pinos and Alcaldè has never been constructed and no map designating that part of the road has ever been filed by the company.

The grant to the Southern Pacific Railroad Company, by the joint resolution of 1870, overlapped the grant to the Atlantic and Pacific made by the act of 1866, from a point near Mojave to the Colorado river, and those lands are a part of the lands in suit here.

The grant to the Texas Pacific Railroad Company, act of Congress of March 3d, 1871, by section 23 of the act authorized the Southern Pacific Railroad Company

"to construct a line of railroad from a point at or near Tehachapi Pass (Mojave) by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company, of California, by the act of July twenty-seven, eighteen hundred and sixty-six, *provided, however*, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

The Southern Pacific filed its map of *general route* under this grant of 1871, from Mojave *via* Los Angeles to Yuma, on April 3, 1871, and thereafter as the road was constructed filed its map of road, so constructed, and located, in five sections, during the years from 1874 to 1878 inclusive.

This grant to the Southern Pacific, known as "branch line grant," also overlaps the grant to the Atlantic and Pacific, and a part of the lands in such overlap are in controversy here.

In the present case the Southern Pacific claims the lands of the Atlantic and Pacific grant, as either primary or indemnity, under section 18, of the act of

Congress of July 27, 1866, or joint resolution of June 28, 1870, or act of March 3, 1871.

In appendix (3) to this brief, "Table of Dates," there is shown the date when each section of the map of definite location of the Atlantic and Pacific Company was filed; when approved and when the lands were withdrawn; also when the Southern Pacific Company filed its map of general route, and when it filed its sectional maps of definitely located and constructed roads on both its main and branch lines; and when the lands were withdrawn; also the action taken by the Interior Department thereon at different times, together with references to the record.

The Essential Facts Briefly Stated.

The Atlantic and Pacific Company filed its map of definite location, under its grant of 1866, in 1872, when the lands were withdrawn. The Southern Pacific Company filed its map of *general route* on its main line, on January, 3, 1867 (which was rejected), and filed its maps of definite location in sections thereafter pursuant to the joint resolution of June 28, 1870, *those sections covering the lands in suit herein were filed in the year 1885.*

The Southern Pacific Company filed its map of *general route* on its branch line from Mojave, via Los Angeles to the Colorado river, under the grant of 1866, on April 3, 1871, *and filed its map of definite location in five sections during the years from 1874 to 1878.*

From this general statement it will be seen that the following facts are evidenced:

First. That the Atlantic and Pacific grant was a

present grant which took effect July 27, 1866, long before either the main line grant or branch line grant to the Southern Pacific Railroad was made, and the title to the lands was vested in the Atlantic and Pacific Company until forfeited by the act of congress of July 6, 1886.

Second. Both the joint resolution of 1870 and section 23 of the act of 1871, provided that there should be excluded from the Southern Pacific grants respectively all lands *granted, reserved, disposed of or claimed* prior to filing the map of definite location of that company.

Third. That long before the Southern Pacific Company filed its maps of *definite location* on either the main line or branch line, these lands were *reserved* by operation of law from the filing of the maps of the Atlantic and Pacific Railroad approved by the Secretary of the Interior, and were also *reserved by the executive orders* of withdrawal, and they were "*claimed*" by the Atlantic and Pacific Company. The legal conclusions which result from the facts, follow with such certainty in view of the many cases deciding the principles involved, that it would seem that extensive argument should be unnecessary.

Former Adjudications.

In order to judicially determine the rights of the United States to the forfeited Atlantic and Pacific grant, several suits were brought in the year 1889 against the Southern Pacific Railroad Company, the trustees of its mortgage bonds and numerous purchasers from the railroad

The first four cases thus commenced involved lands within both the granted and indemnity limits of the Atlantic and Pacific grant and were decided in the Circuit Court adversely to the Government (see 45 Fed, 596 and 46 Fed., 683), but upon appeal to this court the decrees below were reversed and decrees ordered in favor of the Government for the relief sought. (see 146 U. S., 570–615–619.)

Those cases were argued twice in the Supreme Court and were given careful consideration as will appear from the opinions, and after they were decided the United States contended that the effect of those decisions was to determine the right of the United States to the whole of the forfeited Atlantic and Pacific grant in California, but the Southern Pacific Railroad Company contended that nothing was adjudged in those cases, but the title to the *particular tracts of land there sued for* and that the cases were not *res adjudicata* as to the title of *any other land* whatever.

Thereupon the United States pressed against the Southern Pacific Railroad Company another case involving some 700,000 acres of lands within the forfeited Atlantic and Pacific grant, and within the limits primary and indemnity of the grants to the Southern Pacific.

In that case the Circuit Court failed to give effect to the prior adjudications, but decided the case in favor of the Government upon the merits. (see 62 Fed., 531.)

Upon appeal by the Southern Pacific from this decree, the Circuit Court of Appeals affirmed the decree of the court below upon the merits, upon slightly dif-

ferent grounds from that upon which the decision of the Circuit Court was based, but did not decide as to the effect of the prior adjudications. (69 Fed., 47.)

Upon appeal by the Southern Pacific to this Court, the court affirmed the decree entered below (168 U. S., 1, 66), upon the ground as to the Southern Pacific Co., that the issues in the case had been distinctly presented and determined in favor of the United States in the former cases in 146 U. S., 570, 615, 619.

The opinion of this court upon the scope of the pleadings in the prior suits and the effect of the adjucations (168 U. S., 1, 66), shows that the court gave great consideration to the questions presented in order that there should be no misunderstanding thereafter as to the effect which should be given to the final decision of the court of last resort.

In that case the court said (pp. 48, 49) :

"The general principle announced in numerous cases is that *a right, question, or fact*, distinctly put in issue, and directly determined by a court of competent jurisdiction as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies, and even if the second suit is for a different cause of action the right, question, or fact once so determined must as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remains unmodified"

The court held that the decisions in 146 U. S., 615, 619, conclusively determined that the Southern Pacific Railroad Company acquired no title to any of the lands in the Atlantic and Pacific grant.

The court, in the clearest and most unambiguous words of which the English language is suceptible,

stated what issues were presented by the pleadings, and then gave the *grounds* of their decision as follows (pp. 61, 62):

"For the reasons stated, we are of opinion that it must be taken in this case to have been conclusively adjudicated in the former cases, as between the United States and the Southern Pacific Railroad Company—

"1. That the maps filed by the Atlantic & Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to that company by the act of 1866.

"2. That upon the acceptance of those maps by the Land Department, the rights of that company in the lands so granted, attached, by relation, as of the date of the act 1866; and

"3. That in view of the conditions attached to the grant, and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the forfeiture act of 1886, the property of the United States, and by force of that act were restored to the public domain *without the Southern Pacific Railroad Company having acquired any interest therein that affected the power of the United States to forfeit and restore them to the public domain.*

"These grounds being accepted as the basis of our decision, the law in the present case is clearly for the United States; for, as all the lands here in controversy are embraced by the maps of 1872, and therefore appertain to the line located by such maps, it must be, for the reasons stated in the former decision, that the United States is entitled, as between it and the Southern Pacific Railroad Company, to the relief given by the decree below." (see 168 U. S., 61, 62.)

The grounds of this decision, as stated by the court, are not predicated upon the *classes of lands* into which counsel for the Southern Pacific Railroad Company has sought to divide its alleged grants, that is as to whether the lands are in the Southern Pacific "primary limits"

or "indemnity limits" or "main line limits", but is solely predicated upon the ground that the Atlantic and Pacific grant in California, from the Colorado to the Pacific, *is an entirety*, and for the purposes of the case must be regarded as a single tract, and that all questions as to its *validity, extent and operative effect* on the lands along the line and appertaining to it and its forfeiture to the United States *were in issue* and were determined in favor of the United States.

By these decisions the court has *finally determined* the *validity* and operative effect of *two instruments* embracing the Atlantic and Pacific grant in California,(1) the grant of July 27, 1866, to the Atlantic and Pacific Company definitely located by the maps of 1872, and which location operated upon the lands along and pertaining to the road, and (2) the re-conveyance to the United States by the act of forfeiture of July 6, 1886.

The court also determined a third question equally important, viz., that in re-taking the grant under the act of 1886, *it was so re-taken freed from all claims of the Southern Pacific Company.*

Any claim of any kind to this grant now made by the Southern Pacific again denies the validity of these determinations and cannot be tolerated under the settled principles of *res adjudicata.*

The view of counsel for the Southern Pacific, that the controling questions in the former cases were *as to the title of certain classes of their lands*, is quite different from the view that the controling questions were as to the validity and effect of the instruments, making a grant of all these lands to the Atlantic and Pacific by

the act of 1866, and the instrument re taking them by the act of 1886 free of all claims of any kind by the Southern Pacific.

The records of the cases in 146 U. S., are in evidence, and the Southern Pacific Railroad Company and D. O. Mills and G. L. Lansing (now Homer S. King substituted for Lansing), trustees, were paaties. They are also parties here and are bound by the prior adjudication.

The defendant Central Trust Company in the present case is *in privity* with the Southern Pacific Company, as will be hereinafter shown, and is also bound by the prior adjudications.

Evidence of Former Adjudications.

On the trial of the case at bar in the Circuit court, the Government put in evidence the identical evidence introduced and before the court in the former cases before mentioned—the same maps of definite location of the Atlantic and Pacific Company, and the Interior Department letters and orders approving those maps, and ordering withdrawal of granted and indemnity lands.

The Government also introduced in evidence, *as conclusive of the controlling issues in the case at bar, the final records of the former cases*, including the pleadings, final decrees, mandates and opinions of the court in 146 U. S., 570, 615, 619.

The record of the case of U. S. vs. S. P. R. R. Co., *et al.* (146 U. S. 570), involving lands in the *primary or twenty-mile limits of the Atlantic and Pacific*, is found in the record as follows:

Bill of Complaint, record 721, 734;
Answer, record 778, 805;
Replication, record 805;
Mandate of Supreme Court, record 813;
Opinion of Supreme Court, record 825, 819;
Final decree, record 816.

The record of the case involving lands in the Atlantic and Pacific *indemnity* limits (146 U. S., 619) is found in the record as follows:

Bill of Complaint, record 644, 684;
Answer, record 684–707;
Replication, record 708;
Mandate, Supreme Court, record 709, 712;
Opinion Supreme Court, record 825, 819.
Final decree, record 713.

The Pleadings and Issues in the Present Case.

AS TO THE SCOPE OF THE BILL.

In the courts below, counsel for the railroad advanced the claim that the scope of the bill in the present case was only to vacate patents to the particular lands described in exhibit "A" to the bill, and did not embrace the remaining lands within the forfeited Atlantic and Pacific grant, notwithstanding that the answer took issue on all the allegations of the bill and alleged title in the defendants to the Atlantic and Pacific grant in California under both the acts of 1866 and 1871. For this reason, as well as to show that the issues are *res adjudicata*, material parts of the bill will be set forth.

This bill, as clearly disclosed upon its face, is brought

to annul patents to certain lands described in exhibit "A" to the bill, *and to determine the title of the United States to all of the lands in sections designated by odd numbers within the state of California, falling within the thirty-mile limits of the grant to the Atlantic and Pacific Railroad Company made by act of July 27, 1866*, and which line of road was definitely located in the year 1872, estimated to contain upwards of three millions of acres, but there is excepted from the suit certain lands the titles to which have been quieted in former suits brought by the United States against the same parties.

The essential allegations of the bill, describing the lands, and showing the grant made to the Atlantic and Pacific Company by the act of 1866, the acceptance of the grant, definite location of the road, breach of condition in failure to construct the road, and the forfeiture of those lands to the United States by the act of July 6, 1866, and the allegation of ownership of these lands by the United States, and prayer for relief are as follows:

"Your orators further show: that by the act of Congress approved July 27, 1866, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast,' Congress incorporated the Atlantic & Pacific Railroad Company and granted to said company, to aid in the construction of said railroad, a large amount of lands in the state of California and other States and Territories, and to the whole of which said act your orators refer. (see United States Statutes, Vol. 14, p. 292.) * * * *

"Your orators further show that said Atlantic & Pacific Railroad Company duly accepted said grant,

and the terms and conditions of said act, of July 27, 1866, within the time therein required, and did designate upon plats or maps the whole of its line of route under said act, definitely locating the same from Springfield, Missouri, by way of the points and places named in said act, in the time and manner provided in said act, to the Pacific ocean at San Buenaventura, in the state of California, and did file such plats or maps designating said line of route, in the office of the Commissioner of the General Land Office, within the time and in the manner provided in said act, definitely establishing the whole thereof.

"That said company filed maps of definite location designating that part of its said line in the state of California, in said office of the Commissioner of the General Land Office in the year 1872, and as said plats or maps were so filed in the Interior Department they were each then approved by the Secretary of the Interior, and upon the filing of such maps or plats as aforesaid, the United States withdrew from market and reserved all the odd numbered sections of land in California within thirty (30) miles of said line of route, including the lands hereinafter described, and in pursuance of orders of the Secretary of the Interior and Commissioner of the General Land Office, said withdrawal and reservation of said lands was made then of record in the General Land Office and United States district land offices in California, by proper plats, diagrams and maps, to all of which your orators refer.

* * * * * * * * * *

"Your orators allege that said Atlantic & Pacific Railroad Company did not, within the time or manner required by said act of Congress of July 27, 1866, nor at all, construct or complete any railroad or telegraph line, in whole or in part, within the state of California, and that by the act of Congress of July 6, 1886 (24 Stats., p. 123), all lands and rights to lands granted to and conferred upon said Atlantic & Pacific Railroad Company, and situated within the state of California, were forfeited and resumed to the United States, *and said lands were restored to the public domain, including*

all the odd numbered sections of land for thirty (30) miles on each side of said line of route of said Atlantic & Pacific Railroad Company definitely fixed as aforesaid between the eastern boundary of California and the Pacific ocean at San Buenaventura, which lands are still owned by your orators."

* * * * * * * * *

And the bill among other things prays as follows:

" *Your orators further pray that the Court will define and determine the rights of your orators to the odd numbered sections of land in California within the thirty-mile limits of the said line of route of said Atlantic & Pacific Railroad Company, as shown by the maps of said Atlantic & Pacific Railroad Company on file and of record in the General Land Office, and will decree that the United States are the owners in fee of said lands, as against all rights and claims of the defendants based upon or through said grants made by the United States by said acts of Congress, approved July 27, 1866, and March 3, 1871.*

* * * * * * * * *

" Your orators pray for such other and further relief as to the court may seem equitable. * * *"

The prayer of the bill was amended by asking further relief as against the defendant's claims under the resolution of 1870 and act of 1866. [rec. 36, 37.]

The amendment was not necessary to authorize the court to grant the relief to the United States under the prayer for general relief and under the prayer to quiet title to all the lands within the Atlantic and Pacific grant, but if there were any doubt, that ambiguity was clearly removed by the amendment.

The Answer.

The answer of the Southern Pacific Company and other defendants admits the failure of the Atlantic and Pacific Company to construct any railroad in California,

and admits that all rights to lands of that company were forfeited and restored to the public domain by the act of July 6, 1886, but puts in issue every other material allegation of the bill.

The answer sets forth at length the alleged grants by Congress of the lands in suit to the Southern Pacific Railroad Company by section 18 of the act of July 27, 1866, joint resolution of June 28, 1870, and section 23 of the act of March 3, 1871. (rec. 55–89.)

The answer contains the following:

"Said defendants deny that said Atlantic and Pacific Railroad Company filed maps of definite location designating part of its line in the state of California, in the said office of the Commissioner of the General Land Office, in the year 1872, or at any time or at all. * * * * * * * * "

The answer also denies that the maps were approved and that any withdrawal was made for the Atlantic and Pacific Company.

The answer also contains the following:

"Said defendants deny that said Atlantic and Pacific Railroad Company had or claimed to have a prospective right or a present right or a prospective as well as a present right to said lands in controversy. * * * * * * * " "The defendants allege that the plaintiff has no right, title or interest whatsoever in or to said lands or any part thereof. That all of said lands were granted to and are owned by these defendants as is hereinbefore particularly set forth, and that the Department of the Interior has no authority or power to sell or in anywise dispose of said lands."

The United States filed a general replication to the answer, thereby putting in issue all of the allegations of the answer.

The court will observe that the controlling issues in the case are the following:

(1) Whether a valid grant was made to the Atlantic and Pacific Railroad Company by the act of July 27, 1866.

(2) Whether that company filed its map of definite location.

(3) Whether the maps were approved by the Interior Department.

(4) Whether the act of Congress of July 6, 1886, forfeited those lands and restored them to the public domain free and clear of all rights of the Southern Pacific Railroad Company to them.

(5) Whether the grants to the Southern Pacific operated upon any lands within the limits of the Atlantic and Pacific grant.

That these issues were all determined in the first cases in favor of the Government and against the Southern Pacific Railroad Company, the trustees of its mortgage bonds and those in privity with them, clearly appears from the opinions of the court in 146 U. S., 517, 619, and 168 U. S., 1, 66.

The Lands in Suit.

The Government dismissed from the present suit on January 7, 1898, a list of lands which had been patented to the railroad and sold to third parties prior to commencement of suit, which lands are described in the decree.

Of the patented lands remaining in suit 360 acres were patented prior to commencement of this case.

The bill in the present case was filed May 14, 1894, and thereafter and *pendente lite* patents were erroneously issued by the Interior Department to the Southern Pacific for about 30,000 acres of lands embraced in the suit and within the Atlantic and Pacific grant. Prior to the suit the railroad had made executory contracts to third parties for these lands so patented *pendente lite*, and had received about one-fifth of the purchase price, and the contracts provided in effect that the company had not received patents or title to these lands, and that if it failed to do so the contract should be void and the money paid should be refunded.

While the Circuit Court gave the Government a decree for all of the lands in the Atlantic and Pacific grant, except those above named, the court dismissed the bill as to those 30,000 acres patented *pendente lite* although it appeared that the railroad held the *legal title* to the lands, subject to the payment of the bulk of the purchase price, which still remained unpaid. (Record 336, 353.)

Pleas in Abatement.

This suit having been brought to enforce a claim to real estate and to remove a cloud upon the title, such of the defendants as were non-residents of the state were served by publication.

Defendants Southern Pacific Railroad Company and D. O. Mills and G. L. Lansing, trustees, alleged to be citizens of California, residing at San Francisco in the northern district, who were personally served in the state (rec. 40, 41), and the Central Trust Company of

New York, a citizen of the state of New York, filed pleas in abatement and to the jurisdiction. [record 42, 46.]

The pleas upon full argument were overruled [record 49, 51] upon the grounds clearly shown in the opinion filed by Judge Ross of the Circuit Court [see 63 Fed., 481, 486], that there is an essential difference between suits *in rem* and suits *in personam*, and that a suit to enforce a claim to real estate or to remove a cloud upon the title is "substantially a suit in rem" within the doctrine of cases, such as Arndt vs Griggs, 134 U. S., 316, and, therefore, that the court could entertain jurisdiction of the cause upon service by publication, as provided by section 8 of the act of March 3, 1875.

Since the opinion of Judge Ross was rendered upon this question, the whole matter has been entirely put at rest, and in accordance with the views of the Circuit Court in the decisions in

Greeley vs. Lowe, 155 U. S., 58.

Dick vs. Foraker, 155 U. S., 404, 410, 411.

But as the ruling of the Circuit Court in overruling the pleas is not assigned as error, the contention has doubtless been abandoned by defendants.

Jurisdiction in Equity.

The relief sought by this bill is to cancel patents erroneously issued to a part of the lands, and to quiet and determine the title to the lands in California within the Atlantic & Pacific grant, not embraced in former suits.

The jurisdiction in equity is grounded upon: (1)

cancellation of the patents, and (2) the quieting of title conferred by California statute, Code Civil Procedure, section 738, authorizing suits to quiet title, and which statute will be administered by the United States courts in equity. (Moore vs. Steinbach, 127 U. S., 70, 84.)

In the present case the defendants answered to the merits, without raising any question as to the jurisdiction in equity, and put the United States to its proof, and as the Circuit Court had undoubted power to grant the relief sought, any objection to the jurisdiction in equity was waived. (Perrego vs. Dodge, 163 U. S., 160, 164. Brown vs. Lake Superior Co., 134 U. S., 530, 535.)

Assignment of Errors.

(On cross-appeal of United States.)

1. The court erred in decreeing that the United States take nothing as to the lands, or any of them, adjudged by said decree to have been sold by the Southern Pacific Railroad Company to third persons in good faith and for value, being the lands described on pages No. 15 and No. 20, inclusive, of said decree, except the southeast one-quarter of section 25, township 9 north, range 15 west, San Bernardino meridian, it appearing that said lands had been contracted to be sold by said railroad company to third persons upon partial payments, and that only a part of the purchase price had been paid, and that no sale had been completed or deed to any of said lands executed prior to the commencement of this suit.

2. The court erred in refusing to adjudge the United States to be the owner of and to quiet its title to the said lands, or any of them.

3. The court erred in refusing to adjudge that the defendants had no title or interest in said lands or any of them.

4. The court erred in refusing to adjudge the

United States to be the owner of the legal title to said lands and of all interest and estate claimed by the Southern Pacific Railroad Company therein, subject only to the equities in favor of said purchasers respectively to the amounts actually paid upon the purchase price.

5. The court erred in adjudging that patents issued by the United States to defendant Southern Pacific Railroad Company for said lands, pending this suit, granted to or conferred upon the defendants, or any of them, any right, title, or interest in said lands or any of them.

6. The court erred in adjudging that said lands described as aforesaid, or any of them were sold by the Southern Pacific Railroad Company to third persons in good faith or for value.

7. The court erred in adjudging that the terms of the contracts, under which said purchasers and each of them contracted to purchase said lands, did not carry notice to such purchasers, and each of them, of the right and title of the United States to said lands.

8. The court erred in refusing to adjudge what title and rights the defendants before the courts had in said lands.

9. The court erred in refusing to adjudge what title and rights the defendants before the court had in said lands.

10. The court erred in refusing to give the United States a decree for those lands adjudged to have been sold by the Southern Pacific Railroad Company since November 22, 1889, the date of commencement of the suits in the cases reported in 146 U. S., 615–619.

11. The court erred in refusing to adjudge that the Southern Pacific Railroad Company and those in privity with that company, who contracted to purchase lands while the former suits reported in 146 U. S., 615–619, were pending, were not bound by the adjudication in those cases.

12. The court erred in adjudging that any executory contract for the sale of land made by the Southern Pacific Railroad Company is valid as to any pay-

ment made thereon after notice to the purchaser of the rights of the United States.

Points and Authorities.

First Point.

THE QUESTIONS AND CLAIMS IN ISSUE BETWEEN THE PARTIES IN THE PRESENT SUIT, WERE IN ISSUE AND WERE FINALLY AND CONCLUSIVELY DETERMINED IN THE FORMER SUITS BETWEEN THE SAME PARTIES REPORTED IN 146 U. S., 570, 615, 619.

As to what questions, claims and facts were in issue and finally determined in the former cases in 146 U. S. can hardly be stated more clearly than has already been done in 168 U. S., 1, 66.

Notwithstanding that the court evidently supposed it had for ever put at rest all questions as to the scope, validity and effect of the grant to the Atlantic and Pacific Company in California, and as to the operation and effect of the forfeiture of that grant by the act of Congress of July 6, 1886, and as to whether any grant, or claim of the Southern Pacific Railroad Company could operate upon or affect any right of the United States to forfeit those lands and to restore them to the public domain, we find that the Southern Pacific Company is contending here that the former decisions related only to *certain tracts of land* or certain *classes* of land, and that nothing has been adjudged as to the rights of that company to the Atlantic and Pacific grant, under the grant to the Southern Pacific Company by the act of July 27, 1866, and resolution of June 28,

1870, and as to the *rights* of the Southern Pacific to *select* as *indemnity* the lands of the Atlantic and Pacific grant falling within the indemnity limits of the Southern Pacific grants.

The effort of the Southern Pacific Company to distinguish the present case from the cases in 146 U. S., 570, 615, 619, is similar to that assumed by the company in 168 U. S., 1, 66, but however ingenious the argument, the court would not allow counsel for the company to make out that a different question or issue was presented, because slightly different words or phraseology might have been used in the different answers filed by that company, and the court could not see its way clear to say that a different *question* or *claim* was presented because different or other testimony had been taken, and the court, quoting from Last Chance Company vs. Tyler Company, 157 U. S., 690, said:

"The essence of estoppel by judgment being that there has been a judicial determination of the facts, and the question always is, has there been such determination? *and not upon what evidence or by what means was it reached.*"

The court also said:

"The general principle announced in numerous cases is that a *right*, *question* or *fact* distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question, or fact, once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure

the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of the rights of persons and property if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect to all matters properly put in issue and actually determined by them."

In the former case the amended bill of complaint of the United States against the Southern Pacific Railroad Company et al., which was filed December 22, 1889, and the decision in which case is reported in 146 U. S., 615, 619, alleged that a grant was made to the Atlantic and Pacific Railroad Company by the act of Congress approved July 27, 1866.

The amended bill then proceeds to quote the provisions of said act, and then alleges as follows [rec. 669]:

"Your orator alleges that by and pursuant to said act of Congress, the Atlantic and Pacific Railroad Company was created and duly organized, and on November 23, 1866,, within the time and in the manner provided in said act, accepted said grant, and did designate the line of its route from Springfield, Missouri, to the Pacific by maps and plats thereof, which it filed in the office of the Commissioner of the General Land Office, in manner following, to-wit:

On or about March 9, 1872, said company filed in the office of the Commissioner of the General Land Office maps designating the line of its route and showing the general features of the country and vicinity as follows:

First—From San Francisco to San Miguel Mission, in California.

Second—Map of its route from San Miguel Mission via Santa Barbara and San Buenaventura, to a point in township 2 south, range 17 west, San Bernardino Base and Meridian, in California.

Third—Map of its route from said point last men-

tioned to a point in township 7 north, range 7 east, San Bernardino Base and Meridian, in California.

Fourth—Map of its route from said point last named to the Colorado river, and thereafter, on or about March, 1872, said company filed in said office as aforesaid its several other maps designating its route from said point last named to Springfield in the state of Missouri, making altogether a continuous line designating its entire route, and showing the general features of the country from said town of Springfield, Missouri, by way of the points named in said act of Congress of July 27, 1866, to the Pacific at San Buenaventura, and from there to San Francisco, and in the manner provided in said act, and such designation was accepted by the United States.

Your orator alleges that said several parts of its map, filed as aforesaid, made and constituted the entire route or line of said Atlantic and Pacific Railroad Company, fully designating the whole thereof.

Your orator alleges that on March 9, 1872, and on April 22, 1872, the Secretary of the Interior and the Commissioner of the General Land Office, respectively, ordered all the odd sections of land within thirty miles on each side of said designated route of said Atlantic and Pacific Railroad Company reserved from sale and withdrawn.

Your orator alleges that said Atlantic and Pacific Railroad Company did construct and complete a portion of its road west of Springfield, Missouri, in the time and manner required by said act, but did not at any time construct or complete any railroad west of the Colorado river.

Your orator further shows that by the act of Congress approved July 6, 1886, entitled, 'An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and other purposes,' all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were

forfeited, resumed and restored to entry for non-completion of that portion of said railroad to have been constructed in California." [rec. 670, 671.]

These allegations of the bill were denied and put in issue by the answer of the Southern Pacific Railroad Company and other defendants.

The answer contains the following:

"The defendant admits that by and under said last mentioned act of Congress (July 27, 1866) the Atlantic and Pacific Railroad Company was created and organized and did duly accept the provisions of said law within the time and in the manner provided in said act, but it *denies that said Atlantic and Pacific Railroad Company did designate the line of its route from Springfield, in the state of Missouri, to the Pacific Coast*, as required by said act." [rec. 688.]

* * * * * * * * *

"Said company (A. & P. R. Co.) filed two maps, and claimed that they were filed for the purpose of locating parts or fragments of a line for its road in the state of California, but the defendant denies that said maps constituted a valid location of said road in California. Certified copies of said maps are annexed to the answer heretofore filed in this suit by this defendant and marked Exhibit "A," Nos. 1 and 2, which, with the endorsements thereon, are now herein referred to and made part of this answer; and this defendant says that said railroad was not located or attempted to be located on or about March 9, 1872, or at any such time, in California, either in whole or in part, otherwise than aforesaid by said maps. *This defendant denies that the Atlantic and Pacific Railroad Company, by or through the filing of said maps, acquired the right to any lands of the United States lying opposite to the lines or route marked on said maps, and denies that said company acquired the right to select any public lands along said routes or lines as 'other lands' in lieu of sections within twenty miles that had been granted, sold, 'reserved, occupied by homestead settlers, or preempted or otherwise disposed of' by the United States.*"

"These maps were sent to the General Land Office by the Secretary of the Interior with a letter dated March 9, 1872, of which a certified copy is annexed to said answer heretofore filed, marked Exhibit 'B'."

"This defendant says that the lands mentioned in the amended bill herein lie opposite to the line of route marked on the said map, designated in said letter as No. 2 of a portion of the proposed road of the Atlantic and Pacific Railroad Company, that is, a piece of road within the state of California, 'from a point on the western boundary line of Los Angeles county, California, to a point in township seven (7) north, range seven (7) east, of San Bernardino meridian in said state.'" [rec. 688, 689.]

* * * * * * * * * *

"Further answering, this defendant says that the Atlantic and Pacific Railroad Company afterward, viz., on the 13th day of August, 1872, filed in the Department of the Interior two other maps which it claimed were intended to designate the line of other fragments or portions of the railroad in California. Certified copies of said maps, and of the letter of the Secretary of the Interior of April 16, 1874, in respect thereto, are annexed to the answer filed heretofore in this suit, by this defendant, marked Exhibit 'C,' Nos. 1 and 2, and are now herein referred to and made part of this answer. And this defendant denies that said maps constituted a valid location of the parts or fractions of road therein described, *and denies that the four maps hereinbefore mentioned of four several parts of the road* (from Colorado river *via* the Pacific at Ventura to San Francisco) *constituted a valid location of the said Atlantic and Pacific Railroad in California.* And it denies that the said Atlantic and Pacific Railroad was ever in any otherwise lawfully located in the state of California. The grant of lands by the said act of Congress of July 27, 1866, hereinbefore mentioned, was made to aid in the construction of a railroad 'beginning at or near the town of Springfield, in the state of Missouri, thence to the western boundary line of said state, and thence by the most elegible railroad route

as shall be determined by said company to a point on the Canadian river; thence to the town of Alburquerque, on the river Del Norte, and thence by the way of the Agua Frio or other suitable pass, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route to the Colorado river, at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific' (14 Stat., 292.) *And the defendant says that there is nothing in or upon said maps to identify the same as the line of road mentioned in the said act of Congress.*"

And this defendant says, that it was further provided by said act as follows, that is to say:

'SEC. 18—And be it further enacted, that the Southern Pacific Railroad, a company incorporated under the laws of the state of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the state of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for.'

And that the construction of a railroad from the Colorado river to San Francisco was expressly relegated and appropriated to this defendant, and the said Atlantic and Pacific Railroad Company was never authorized to construct any such line of railroad or to acquire any lands by reason of or in respect of the construction or proposed construction of any such line. [rec. 690–692.]

* * * * * *

The said parts of its (A. & P. R. Co.'s) *map, when taken together, showed a line terminating at San Fran-*

cisco, which was not the terminus provided for by said act of Congress. [rec. 692.]

This defendant denies that on March 9, 1872, and April 22, 1872, or at any such times, the Secretary of the Interior, and the Commissioner of the General Land Office, ordered all the odd sections of land within thirty miles on each side of the designated route of the said Atlantic and Pacific Railroad Company reserved from sale and withdrawn.

* * * * * * *

This defendant avers that the lands involved in this suit had previously, on the 3rd, April, 1871, by the filing of the map of definite location of the defendant's railroad, been *duly reserved* from sale by and under the said twenty-third section of the act of Congress of March 3, 1871, and the 6th session of the act of Congress of July 27th, 1866, which said sections are quoted in the bill of complaint herein, and avers also that said lands had been duly withdrawn from market *and appropriated* for the use of this defendant by the order of the commissioner of the general land office to the register and Receiver of the United States land office at Los Angeles, issued April 21, 1871, a copy of which is hereto annexed *marked* 'R' and made a part of this answer." [rec. 693.]

The *general replication* filed by the United States put in issue *all of the allegations of this answer.* [record 708.]

Other allegations of the bill and of the answer might be quoted for the convenience of the court, but inasmuch as they have been set forth at length by the court in 168 U. S., 1, 66, it is believed that further quotation from the pleadings in that case are unnecessary.

The bills of complaint filed by the United States in the former cases which were decided in 146 U. S., 570,

614, were similar to the bill filed November 22, 1889, in the case reported in 146 U. S., p. 619, [record 721], and in those cases D. O. Mills and G. L. Lansing, trustees (now D. O. Mills and Homer S. King), were parties defendant and they are parties defendant here. The answer of the Southern Pacific Railroad Company, D. O. Mills and G. L. Lansing, trustees, in those cases contained the following further averment:

"*But respondents deny that by said act (July 27, 1866), any grant of lands was made to the Atlantic and Pacific Railroad Company, which attached to the surface of the earth in the State of California, or took any lands in the State of California from out the public domain.*" [record 779–780.]

From these pleadings it appears that the *issues presented* and the *claims made* by the respective parties were the following:

The United States claimed that a valid grant had been made from Springfield, Missouri, to the Pacific ocean at San Buena Ventura to the Atlantic and Pacific Company, which grant in the state of California, primary and indemnity limits, was thirty miles wide on each side of the route, embracing alternate sections.

That the Atlantic and Pacific Company *definitely located* its line of railroad from Springfield, Missouri, to the Pacific ocean according to law, and that such plats were *accepted* by the United States in *1872*, and at that time the lands falling within the primary and indemnity limits were *withdrawn* from market and *reserved*, and were appropriated to that company.

That the Atlantic and Pacific violated the conditions

of its grant by failing to build the road, and that the entire grant in California was *forfeited*, resumed and *restored to the public domain* by the act of Congress of July 6, 1886.

These claims of the Government were all denied by the Southern Pacific Company and by the other defendants.

The Southern Pacific Company and the trustees of the mortgage bonds made the following claims:

That a grant of lands was never made to the Atlantic and Pacific Railroad Company in the state of California.

That that company never filed any map of definite location of its line of railroad, or otherwise identified any line of route or any lands contiguous to any such line.

That the grant of lands and authority to build a railroad from Needles on the Colorado river to the Pacific ocean was never conferred upon the Atlantic and Pacific Railroad Company, but in the language of the answer, referring to section 18 of the act of July 27, 1866, and of the maps filed by the Atlantic and Patific from the Colorado river via Ventura to San Francisco, that the said grant and right "*was expressly relegated and appropriated to this defendant* * * *."

That section 18 of the act of 1866 made a grant to the *Southern Pacific Railroad Company* upon the very line which the Atlantic and Pacfic Company accepted and upon which it filed its map of definite location, and consquently that the Southern Pacific Company was entitled to that grant and not the Atlantic and Pacific Company.

That the grant to the Atlantic and Pacific Company never took effect "on the surface of the earth in the state of California."

That the lands within the limits of the Atlantic and Pacific grant were granted to the Southern Pacific by the acts of 1866 and 1871.

That the operative effect of the act of Congress of July 6, 1886, was not to restore to the public domain the grant to the Atlantic and Pacific, but that it was wholly inoperative as affecting any lands in California or the rights of the Southern Pacific to them. (see 168 U. S., 38, 39, 40.)

These claims of the Southern Pacific Company were put in issue by the United States by general replication to the answer.

Upon the issues thus joined and proofs made by the respective parties, the Circuit Court entered decisions in favor of the defendants dismissing the bills of complaint, from which appeals were taken to this court. (see 39 Fed., 132; 40 Fed., 611; 45 Fed., 596; 46 Fed., 683.)

Upon appeal to this court it was adjudged that sufficient and valid maps of definite location were filed in the year 1872 by the Atlantic & Pacific Railroad Company, which took effect upon the lands along the line of route in California, between the Colorado river and the Pacific ocean, and that the title and right to those lands remained in the Atlantic & Pacific Railroad Company, subject to a condition subsequent, and that upon failure to construct the road the grant to the Atlantic & Pacific Railroad was forfeited and resumed by the

United States by the act of Congress of July 6, 1886, and that the Southern Pacific Railroad Company acquired no right or title to those lands. (See 146 U. S., 570, 615, 619.)

And the court said, at page 603:

"There never was a time, therefore, at which the grant of the Southern Pacific could be said to have attached to these lands, and the plausible argument based thereon, made by counsel in behalf of the Southern Pacific Company, falls to the ground."

The court further said, at page 607:

"Our conclusions, therefore, are, that a valid and sufficient map of definite location of its route from the Colorado river to the Pacific ocean was filed by the Atlantic and Pacific Company, and approved by the Secretary of the Interior; that by such act the title to these lands passed, under the grant of 1866, to the Atlantic and Pacific Company, and remained held by it subject to a condition subsequent until the act of forfeiture of 1886; that by that act of forfeiture the title of the Atlantic and Pacific was retaken by the general government, and retaken for its own benefit, and not that of the Southern Pacific Company; and that the latter company has no title of any kind to these lands. *The decrees of the Circuit Court must be reversed, and the cases remanded with instructions to enter decrees for the plaintiff for the relief sought.*"

The Southern Pacific Company, still disputing the effect of the former adjudications in the cases in 146 U. S., compelled the Government to press to final decree other suits against that company, including the case against the Southern Pacific Railroad Company, et al., reported in 168 U. S., 1–66, in which case the court then adjudged, as it had in the former suits, that the lands appertaining to the Atlantic & Pacific grant in California, between the Colorado river

and the Pacific were forfeited in 1886 by the United States, without the Southern Pacific having acquired any right, title or interest therein that affected the power and authority of the Government to forfeit them and retake them.

The cause reported in 168 U. S., 1–66, was not only brought for lands within the Atlantic & Pacific grant claimed by the Southern Pacific under the act of March 3, 1871, called the "branch-line grant", but also embraced a large quantity of lands claimed by the Southern Pacific Company under the act of July 27, 1866, called the Southern Pacific "main-line grant"; and the lands embraced in the case in 168 U. S., 1–66, included:

(1) Lands in Atlantic and Pacific granted limits and granted limits of Southern Pacific Railroad branch line;

(2) Lands in Atlantic and Pacific granted limits and Southern Pacific indemnity limits branch line;

(3) Lands in Atlantic and Pacific indemnity limits and Southern Pacific granted limits branch line;

(4) Lands in Atlantic and Pacific indemnity limits and Southern Pacific indemnity limits branch line;

(5) Lands in Atlantic and Pacific granted limits and Southern Pacific granted limits main line;

(6) Lands in Atlantic and Pacific granted limits and Southern Pacific indemnity limits main line;

(7) Lands in Atlantic and Pacific indemnity limits and Southern Pacific granted limits main line;

(8) Lands in Atlantic and Pacific indemnity limits and Southern Pacific indemnity limits main line.

It was vigorously argued and at great length by counsel for the Southern Pacific in the case in 168 U. S., that the principle of *res adjudicata* could not be applied to the lands there involved, because the lands were in a *different class* from those involved in the cases in 146 U. S., but the *ground upon which the court rested its decision precluded the Southern Pacific Railroad Company and those in privity with it from claiming the lands in California appertaining to the Atlantic and Pacific grant, which it had been adjudged were forfeited and restored to the public domain in 1886, without the Southern Pacific Company having acquired any interest in those lands.*

THE CASE OF SOUTHERN PACIFIC VS. UNITED STATES, 168 U. S., 1, 66, WHICH INVOLVED LANDS IN THE ATLANTIC AND PACIFIC GRANT CLAIMED BY THE SOUTHERN PACIFIC UNDER BOTH ITS "MAIN LINE" GRANT OF 1866 AND "BRANCH LINE" GRANT OF 1871, WAS DECIDED *AFTER* THE PRESENT CASE WAS ARGUED AND SUBMITTED IN THE CIRCUIT CO T (Record 334), AND THEREFORE THE R CORD IN THAT SUIT WAS NOT INTRODUCED IN EVIDENCE IN THE PRESENT CASE, BUT THE QUESTIONS THERE DECIDED CONTROL EVERY ASPECT OF THE PRESENT SUIT.

The contention now made by the Southern Pacific that the court did not decide, in Southern Pacific Railroad vs. United States, 168 U. S., 1, against the claim of that company to lands within its "main line" grant

under the act of July 27, 1866, and joint resolution of June 28, 1870, is fully met by the claims made in that suit, the evidence in the case, the decree of the courts below, the arguments of counsel for the railroad company, the opinion of this court and especially by the grounds of that decision.

The seven hundred thousand acres of land involved in that suit are described in the opinion of the court (168 U. S., 24), the location of which with respect to the main and branch lines of the Southern Pacific and Atlantic and Pacific grants can be readily ascertained by reference to the maps in evidence in the former case (see map 33), and in the present case by the same map at page 640.

The answer of the Southern Pacific Railroad Company and of the other defendants in the case in 168 U. S. 1–66, upon which issue was joined by general replication, distinctly set up and averred *a claim of right* to the lands embraced in that suit under its "main line grant" of July 27, 1866, as well as its "branch line grant" of March 3, 1871.

Counsel for the Southern Pacific have seen fit to quote from the oral argument in the Circuit Court of Appeals of counsel for the Government, in the attempt to show that there was no issue as to the main line grant in either of the lower courts or in this court in that suit; but what was contended in the Court of Appeals as well as in this court in that cause by counsel for the Government was that the Southern Pacific Company had badly pleaded its cause and had weakly supported it by evidence in failing to distinctly aver

and prove a definite location and construction of the road.

But the claims of that company to that grant and the proofs to support them were made in their own peculiar way.

In the answer of the Southern Pacific in that cause, which was filed May 1, 1891, and which was a part of the record in the Circuit Court and in the Circuit Court of Appeals, *but which for some reason, is not contained in the printed record in that cause, in this court,* contains the following averments:

"The respondents deny that the said Atlantic and Pacific Railroad Company was authorized by said act or any other act of Congress to locate or construct a line of railroad from the crossing of the Colorado river to San Francisco. They are advised and believe, and therefore aver, *that under said act of Congress the respondent, the Southern Pacific Railroad Company, alone was authorized to construct a line of railroad from the crossing of the Colorado river to San Francisco and to acquire lands under said act of Congress along and opposite said line* * * * * *

The respondents admit that the lands described in the complainant's bill are not mineral lands and that they have never been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of by the United States, *except as they have been granted to the Southern Pacific Railroad Company under said Congressional grants, made July 27, 1866, and March 3, 1871.* * * * * * *

As to the other lands described in said bill of complaint, and not included in the said schedules, Exhibits A, B, C, and D above mentioned, *the respondents claim the right to locate and select under said acts of Congress of July 27, 1866, and March 3, 1871*, all such as are or at the time of the accrual of their rights under said acts were public lands, not excepted from said grants."

In the amended answer of the Southern Pacific Company and others, in that cause, filed June 12, 1893, it is averred as follows: (record No. 71, October 1, 1900. 168 U. S.)

"The said respondents aver that the said Atlantic and Pacific Railroad Company never made any actual or definite location of its railroad in California, nor constructed any part of a railroad in said state, under or according to the act of Congress approved July 27, 1866, or any amendments, modifications or supplements thereto, or otherwise howsoever.

* * * * * * * * *

The said respondents deny that the said Atlantic and Pacific Railroad Company was authorized *by said act or any other act of Congress to locate or construct a line of railroad from the crossing of the Colorado river to San Francisco; they are advised and believe and therefore aver that under said act of Congress the respondent, the Southern Pacific Railroad Company, alone was authorized to construct a line of railroad from the crossing of the Colorado river to San Francisco, and to acquire lands under said act of Congress along and opposite said line.*"

(record in case in 168 U. S., 1, at pages 100, 101, and 102.)

It is further averred in the amended answer in that cause:

"That attached hereto and made a part of this answer, are several exhibits, which respondents ask may be taken *as a part of the answer*, and referring thereto and to each and every allegation, to which said exhibits are pertinent, namely * * * * * * Exhibit B, referred to on page 22 of the answer, being a *statement under date of July 3, 1890*, of the condition on the books of the Land Department of the Southern Pacific Railroad Company of lands involved in said suit, tabulated under the following headings:

Contract No. Contract dated. Purchaser. Address. Fraction. Sec. Twp. Rge. Acres. Sold for. Sur-

veyed or unsurveyed. A. & P. R. R. Co. limits. *S. P. R. R. limits. Main. Branch line*,"
and other information.

(record in 168 U. S., 1, at pages 120, 121.)

The tables of land sales in the *statement of July 3, 1890*, referred to in the answer, *and made a part thereof*, are found in the record in the case in 168 U. S., in the first half of Volume 6, and those tables show that lands estimated to exceed one hundred thousand acres in quantity are situated within the Southern Pacific "main line grant," and within the following townships described in those tables.

Township 6 and 7 north, ranges 11, 12, 13, 14, 15, 16 and 17 west; township 5 north, ranges 8, 9, 10, 11, 12, and 13 west, S. B. M.

The maps showing the Southern Pacific main and branch line grants and their 20 and 30-mile limits, some of which were introduced by each party, are found in the record in that case in Volume 6, being maps 4, 19, 33 and 36.

The decree of the Circuit Court in the case in 168 U. S. annulled all patents issued pursuant to the *act of Congress of July 27, 1866*, and acts amendatory and supplemental thereto (record in 168 U. S., 1, at page 357), and the land tables contained in Exhibit "B" to the answer, show that a large part of the lands within the main line grant were embraced by the patents so vacated.

This ruling of the Circuit Court and the affirmation thereof by the Circuit Court of Appeals *annuling patents under the act of 1866*, was assigned as error by

the Southern Pacific Company upon its appeals (record in 168 U. S., 1, at pages 3175 and 3218).

The claim of the Southern Pacific Company to those lands within its "main line" grant was argued in this court by counsel for appellants and also by counsel for the Government. (See appellee's brief, pp. 122–130.)

Although it was contended by council for the appellants that a considerable part of the lands involved were situated within the main line grant of the Southern Pacific, and for that reason that the lands were held under a different title and could not be controlled by the decisions in 146 U. S., yet it was argued with the same breath that the Southern Pacific Company had not sufficiently alleged and proven a definite location of the road to fully present its claim of title, but the result reached in most cases is because one side or the other has lacked in sufficiency of proofs and it is held that a final adjudication may be had even in a case where the defendant has defaulted.

Last Chance Min. Co. vs. Tyler Min. Co., 157 U. S., 683, 691.

Southern Pacific vs. United States, 168 U. S., 1, 51.

In the opening brief of counsel for appellants in the case in 168 U. S., 1, at pages 120, 121, it is said:

"It appears that some 6,077.80 acres of land involved in this suit (and embraced within the limits of the Branch Line Grant under the Texas Pacific Act of 1871) are also embraced within the grant to the Southern Pacific Railroad Company, made by the 18th section of the Atlantic & Pacific Act of July 27, 1866, for what is called (in land-grant nomenclature) the Main Line of the Southern Pacific—viz., from Mojave to the Needles.

This fact appears from a diagram offered in evidence

by the complainant marked 'Exhibit No. 29' (vide Vol. 6 of Record, Map 31). This diagram was certified by the Commissioner of the General Land Office, January 19, 1889, as "a diagram on file in this office showing "the limits of the grant to the Atlantic & Pacific Rail-"road Company in Los Angeles Land District with the "intersecting limits to the agent to the Southern "Pacific Railroad Company, main and branch lines," and shows the line of the Southern Pacific Main Line Grant, and also by a yellow line the 20-mile limit therefrom on the south. Embraced in this suit, but north of said yellow line (and thus included in the Main Line Grant), are the following lands:

Sections 13, 15 and 17, T. 7 N., R. 11 W	1,920.00 acres
Sections 13, 15 and 17, T. 7 N., R. 12 W	1,920 00 "
Sections 7, 13, 15 and 17, T. 7 N., R. 13 W	2,237.80 "
Total	6,077.80 acres

In the petition for rehearing filed in that case by counsel for appellants, wherein a reconsideration was sought as to lands within the Southern Pacific main line grant and as to the right of the Southern Pacific to select indemnity within the limits of the forfeited Atlantic & Pacific grant, counsel for appellants, apparently forgetting the allegations of their answer, the maps introduced in evidence by both parties, and the decree of the Circuit Court, annulling patents under the act of 1866, and their own assignment of error in the lower courts showing to the contrary, proceed as follows, in their Petition for Rehearing:

"The appellants in the above entitled cause hereby humbly pray that the said case may be reheard, and a reargument therein ordered as to certain classes of land involved in the suit, and which are hereinafter specific-

ally referred to, and that decrees be rendered in respect to such respective classes of land, as hereinafter prayed respectively." (See pages 1 and 2.)

"FIRST."

"AS TO THE LANDS EMBRACED WITHIN THE *INDEMNITY LIMITS* OF SOUTHERN PACIFIC *BRANCH LINE GRANT*, AND THE RIGHT OF THE SOUTHERN PACIFIC RAILROAD COMPANY TO MAKE INDEMNITY SELECTIONS THEREIN *AFTER* THE FORFEITURE OF THE ATLANTIC AND PACIFIC GRANT AND THE RESTORATION TO THE PUBLIC DOMAIN OF THE LANDS INCLUDED THEREIN."

"SECOND."

"AS TO THE CLAIM OF THE SOUTHERN PACIFIC RAILROAD COMPANY, AND THE MORTGAGE TRUSTEES, IN RESPECT TO LANDS EMBRACED WITHIN ITS *MAIN LINE GRANT* UNDER THE 18TH SECTION OF THE ATLANTIC AND PACIFIC ACT OF 1866."

"As a matter of fact considerable amounts of land embraced within the limits of the Main Line Grant are included within the land for the recovery of which by the United States this suit was brought. But these lands were also embraced within the limits of the Southern Pacific Branch Line Grant, and it was not observed by counsel in charge of the defense of this suit that these lands were also covered by the Main Line Grant, until the case was being prepared for argument in the Circuit Court of Appeals. (See page 47.)

This court decided against the claims and contentions of the Southern Pacific Company as to the lands

within the forfeited Atlantic and Pacific grant claimed by it under both its main line and branch line grants, and placed its decision upon the following grounds, which absolutely precluded that company from claiming any of the forfeited Atlantic and Pacific grant under either the act of 1871, 1866 or any other act.

"For the reasons stated, we are of opinion that it must be taken in this case to have been *conclusively adjudicated* in the former cases as between the United States and the Southern Pacific Railroad Company—

1. That the maps filed by the Atlantic and Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to that company by the act of 1866.

2. That upon the acceptance of those maps by the Land Department, the rights of that company in the lands so granted, attached, by relation, as of the date of the act of 1866; and,

3. *That in view of the conditions attached to the grant, and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the forfeiture act of 1886, the property of the United States, and by force of that act were restored to the public domain,* WITHOUT THE SOUTHERN PACIFIC RAILROAD COMPANY HAVING ACQUIRED ANY INTEREST THEREIN THAT AFFECTED THE POWER OF THE UNITED STATES TO FORFEIT AND RESTORE THEM TO THE PUBLIC DOMAIN.

These grounds being accepted as the basis of our decision, the law in the present case is clearly for the United States; *for, as all the lands here in controversy are embraced by the maps of 1872, and, therefore, appertain to the line located by such maps, it must be, for the reasons stated in the former decision, that the United States is entitled, as between it and the Southern Pacific Railroad Company, to the relief given by the decree below.*"

The lands in suit here are also within the thirty-mile

limits of the grant to the Atlantic and Pacific Company and appertain to the line of route as definitely located and established by that company in the year 1872. It cannot be possible, therefore, that the defendants in former suits or their privies can have any right, title or interest in or to any of these lands under the act of July 27, 1866, or act of March 3, 1871, or any other act.

The determination by the court of *every one of the issues* and *claims* of the respective parties in the former suits is necessarily repugnant to and inconsistent with any claim by the defendants here to any of these lands.

In the former suits the Southern Pacific Railroad Company and D. O. Mills and G. L. Lansing, trustees for bondholders, under the mortgage of 1875, were parties defendant. By reason of the death of Lansing, Homer S. King has been substituted as defendant in this suit.

The adjudications are, therefore, binding upon the Southern Pacific Company and D. O. Mills and Homer S. King, trustees.

Kerrison vs. Stewart, 93 U. S., 155, 160.

Corcoran vs. Canal Co., 94 U. S., 741, 745.

Sanders vs. Peck, 87 Fed., 61, 62, 63.

2. DEFENDANT, THE CENTRAL TRUST COMPANY OF NEW YORK, HAVING BEEN INTERESTED IN THE FORMER SUITS, AND HAVING BEEN REPRESENTED THERE BY THE SOUTHERN PACIFIC RAILROAD COMPANY, IS ALSO BOUND BY THE FORMER ADJUDICATIONS.

In the present case defendant, Central Trust Company of New York, is a trustee for the bondholders under a certain mortgage or deed of trust, *secured upon the lands granted to the Southern Pacific Railroad Company by the acts of Congress of July 27, 1866, and March 3, 1871, executed by the Southern Pacific Railroad Company to the Central Trust Company on August 25, 1888.* [rec. 1725.]

The mortgage of 1875 from the Southern Pacific Railroad Company to Mills and Lansing, trustees referred to in the mortgage of 1888, contains the following provision:

"*That all the lands hereinabove conveyed and mortgaged shall be under the sole and exclusive management and control of the said party of the first part* (Southern Pacific Railroad Company), who shall have full power and authority to make contracts for the sale of the same at such prices and on such credit or terms of payment and such other conditions as shall be agreed on by the said parties of the first and second parts, and as shall seem to them best calculated to secure the payment in full of all the bonds issued as hereinbefore provided, until entry or foreclosure by the trustees * * * ." [rec. 1706.]

The mortgage of August 25, 1888, to the Central Trust Company provides as follows: (see p. 1751.)

"All lands granted or conveyed under the acts of Congress hereinbefore referred to and in anywise affected by the provisions hereof, shall be subject to the express provision that if and so long as the bonds issued under and secured by the said indenture or mortgage to D. O. Mills and Lloyd Tevis, dated April 1, 1875, or any thereof shall remain outstanding, *any and all sales made in the manner in said mentioned indenture of mortgage prescribed, shall absolutely and forever release the said lands from any and all liens or en-*

cumbrances of, under or in respect of, this mortgage or the bonds issued thereunder; and if and when all the bonds issued under said indenture of mortgage of April 1, 1875, shall have been fully satisfied and discharged and the lien of such last mentioned indenture of mortgage upon such lands fully released, then the lands, so far as they remain unsold at that time, shall be subject to like provisions in respect to sale, and conveyance and release from the lien of this mortgage as are in said mortgage of April 1, 1875, prescribed in respect to sale and conveyance and release from the lien thereof."

By the very terms of this mortgage the "*sole and exclusive management and control*" of these lands was placed by the Central Trust Company, trustee for the bondholders *in the Southern Pacific Railroad Company*, thereby contemplating and intending that the Southern Pacific Railroad Company should not only go on and secure title to these lands from the United States under the acts of Congress, if possible, and from time to time to sell and dispose of them, but that it should prosecute or defend all suits or other proceedings affecting the *management* and *control* of *these lands*. But the trust deed to the Central Trust Company expresssly provided that it should not cover any lands theretofore "*sold*" [rec. 1745]. Therefore if the trust deed of 1875 was a "*sale*" as now contended, these lands were not covered by the trust deed of 1888.

In pursuance of the power and authority conferred upon the Southern Pacific Railroad Company by the trustees and bondholders to take charge of the *sole* and *exclusive management* and *control* of these lands, the Southern Pacific Railroad Company vigorously defended the former suits brought by the Government to quiet the title of the United States to the lands in con-

troversy, and it is not denied but that the Southern Pacific Railroad Company and the trustees of the bonds were ably represented in those suits. In pursuance of its authority to *sell* the lands, the Southern Pacific Company has for years made contracts of sale to numerous persons.

The principle is well settled that a person although not a formal party of record in an action, if *represented* in such litigation is bound by the judgment to the same extent as if a party of record, and a judgment against a trustee or one acting in a representative capacity binds the *cestui que trust*.

Woods & Woodson 100 F , 515, 519 (C. C. A. 8th).

Kerrison vs. Stewart, 93 U. S., 155, 160.

Van Vechten vs. Terry, 2 Johns. Ch., 197.

Davis vs. Gray, 16 Wall., 203 at p. 232.

Corcoran vs. Canal Co., 94 U. S., 741 at p. 744, 745.

Shaw vs. Railroad Company, 100 U. S., 605, 611.

Maloy vs. Duden, 86 Fed., 402, 404.

In the latter case the court said :

"To give full effect to the principle by which parties are held bound by a judgment and are not permitted to re-examine the controversy decided by it, not only those who are nominal or formal parties are considered but so are all others who are identified in interest with either of the immediate parties, and who actually participate in conducting the controversy. The real principal who is behind the formal party and is actually represented by him throughout the controversy is the real party, and in order to invoke a judgment as an estoppel for or against him, it is always competent to show what the real situation was and what part in promoting or defending the suit was actually taken by

him. 1 Greenl. Ev., 523; Lovejoy vs. Murray, 3 Wall., 1; Robbins vs. Chicago City, 4 Wall., 657. It is upon this principle that it has often been held that the owner of a patent can invoke a former adjudication of its validity as an estoppel in a subsequent suit against an infringing defendant, although the defendant was not a party of record in the former suit. Miller vs. Tobacco Co., 7 Fed., 91; Manufacturing Co. vs. Miller, 41 Fed., 357; David Bradley Mfg. Co. vs. Eagle Mfg. Co., 6 C. C. A., 661, 57 Fed., 985."

In the recent case of Sanders vs. Peck, decided by the Circuit Court of Appeals for the 7th Circuit, 87 Fed., 61, 62, 63, the court held that a person who was represented in a former suit by an *agent* was fully bound by the adjudication. In that case the court said:

"In contemplation of law the appellant was a party to the proceedings and decree, *represented by his attorney Corbin*, of whose unrevoked authority in the premises there is and can be no question, and if the decree so rendered is not to be regarded as having been consented to by the appellant, it is at least binding upon him until set aside, as of course it might be on proof of fraud."

It is, therefore, submitted that there can be no doubt but that the Central Trust Company of New York, trustee for bondholders under the mortgage of 1888, defendant in the present suit, is bound by the prior adjudications equally with the Southern Pacific Railroad Company, and as under the former decision the trustees acquired no interest in the lands, they could not be bona fide purchasers under the confirmation acts of 1887 or 1896.

3. The mortgage by the Southern Pacific Company to Mills and Lansing, trustees, executed in 1875, also provides that the Southern Pacific Company

shall have the sole and exclusive management and control of the lands, and for the reasons given, and upon those authorities these trustees and the bondholders whom they represent would also be bound by the former adjudications even if they had not been parties of record.

Neither the trustees nor the bondholders could have been *bona fide* purchasers under the acts of 1887 or 1896, which confirmed the titles of *bona fide* purchasers as it was adjudicated that they had no title.

4. THE SOUTHERN PACIFIC RAILROAD COMPANY BEING ESTOPPED BY THE PRIOR ADJUDICATIONS FROM DISPUTING THE TITLE OF THE UNITED STATES TO THE LANDS WITHIN THE LIMITS OF THE ATLANTIC AND PACIFIC GRANT, THAT COMPANY AND THOSE IN PRIVITY WITH IT ARE ESTOPPED FROM CLAIMING THAT THE COMPANY HAS SOLD ANY OF THOSE LANDS SINCE THE COMMENCEMENT OF THE FORMER SUITS TO THIRD PERSONS.

The court said, in 168 U. S., at p. 48:

That "a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties *or their privies.* * * * ".

The amended bill of complaint in the case against the Southern Pacific Railroad Company, decided in 140 U. S., 615–619, was filed *Nov. 22, 1889*, and the defendants were then in court. (record 644.)

The answer of the Southern Pacific was filed *December 30, 1889.* (rec. 684.)

The replication of the United States was filed January 25, 1890. (rec. 708.)

The decree of the Circuit Court dismissed the bill in the present case as to about 30,000 acres of land [record 353–362] upon the ground that prior to the commencement of the *present* suit the Southern Pacific Railroad Company had sold or contracted to sell those 30,000 acres.

From this part of the decree the United States has taken a cross-appeal. [record case 495, pp. 4–7.]

These contracts of sale were made by the company to divers persons.

Many of the contracts of sale were made subsequent to the commencement of the former suits (see Table of Land Sales, Appendix 4), including the following:

To W. M. and M. C. Bailey, September 21, 1892; 321.29 acres; agreed price $400. Paid prior to present suit $205.62.

To same parties; same date; 320 acres; agreed price $400; paid $204.80.

To Joseph B. Lippincott, January 18, 1894; 98.64 acres; agreed price $493.20; paid $181.50.

To George R. Lyman, April 11, 1892; 160 acres; agreed price $400; paid $169.60.

To same person; same date; 160 acres; agreed price $400; paid $169.60.

To same person; same date; 160 acres; agreed price $400; paid $169.60.

To same person; same date; 160 acres; agreed price $400; paid $169.60.

To Mrs. Elizabeth Schleismayer, April 12, 1895; 120 acres; agreed price $960; paid $245.76.

To W. M. and M. C. Bailey, January 25, 1892; 320 acres; agreed price $1360; paid $307.20.

To same parties; May 13, 1892; 160 acres; agreed price $400; paid $102.

To same parties; January 25, 1892; 640 acres; agreed price $2720; paid $739.28 [record pp. 272, 284, 286.]

The Southern Pacific Railroad Company, and those in privity with it, being estopped in this suit from denying that the act of Congress of July 6, 1886, forfeited these lands and that by operation of that act they became the *property* of the United States *and were restored to the public domain*, it cannot lie in the mouth of the Southern Pacific to show in this suit, that after the commencement of the former suits they sold or conveyed any interest in these lands to third persons, as they and their privies are all bound and estopped by the prior adjudications.

The principle is well settled that a third person who purchases a right or property *under litigation*, from a party to a suit, is bound by the judgment entered in such suit to the same extent as if a formal party, and in contemplation of law such purchaser is represented in such suit by the party from whom he has purchased.

Murray vs. Ballou, 1 Johns. Ch., 566.

Whiteside vs. Hazelton, 110 U. S., 296, at p. 301.

Union Trust Co. vs. Southern Co., 130 U. S., 565, 571.

It is, therefore, submitted that the effect of the former adjudications was to establish the title of the United States to these lands as against the Southern Pacific Railroad Company and the purchasers who are in privity with it, and that the company defendant here is estopped from claiming that any third person has acquired any interest in the property since the commencement of the former suits.

5. IN ANY EVENT, EXECUTORY CONTRACTS OF SALE MADE BY THE SOUTHERN PACIFIC COMPANY CAN HAVE NO VALIDITY AS TO ANY PAYMENTS MADE AFTER NOTICE TO THE PURCHASERS.

The 30,000 acres of land, as to which the decree of the Circuit Court dismissed the bill, were contracted to be sold to divers persons by the Southern Pacific Company upon *executory contracts*, upon which one-fifth of the purchase price was paid at date of contract, and the balance of the purchase price was payable in equal amounts, running through a period of years. [rec. 272–310.]

It appears from the evidence that one or more payments of principal had been made upon each of the contracts, at time of commencement of present suit, and on most of them there had been payments made of interest due upon the unpaid purchase price.

The tabulated statement of sales, showing names of purchasers, description of land, dates of sales, purchase price and amount paid, furnished by the Southern Pacific Company (Appendix 4) shows *that the greater part of the purchase price*, in each contract of sale, *remained unpaid at the time of the commencement of the present suit* as well as when the former suit was commenced. The bill in the present suit was filed May 14, 1894, [rec. 8–27], *and subpœna served* July 23, 1894. [rec. 40, 41].

In order to constitute a purchase there must be a payment, and the purchase is not completed excepting as to the payments actually made prior to notice.

In *Lytle* vs. *Lansing*, 147 U. S., 59, at p. 70, the court said that it was "a settled rule in equity that a purchaser without notice to be entitled to protection must not only be so at the time of the contract or conveyance, but at the time of the payment of the purchase money." Citing numerous authorities.

Applying this principle to the contracts to purchase in the present case, and it appears that as to whatever payments have been made after May 14, 1894, cannot operate to affect the legal or equitable rights of the United States to this land in any event.

And that principle applies with equal force to payments made subsequent to commencement of former case on September 29, 1889.

The legal title to these lands remained in the Southern Pacific Company (if not in the Government), subject to the payment of the balance of the purchase price, and an equitable right remained in the purchaser to the extent of payments made prior to the commencement of this suit or of notice.

Williams vs. U. S., 138 U. S., 514–516.

Jennison vs. Leonard, 21 Wall., 302, at p. 309.

1 Story's Eq. Jur., 396.

2 Pomr. Eq. Jur., Secs. 688, 1048.

In any event, therefore, the United States was entitled to a decree for the interest which the Southern Pacific Railroad Company held in these tracts at the time this suit was commenced, and the decree of the Circuit Court in dismissing the bill as to these lands was erroneous.

The amendatory act of Congress of Feb. 12, 1896 (see Appendix), expressly provided that where less than the

Government price had been paid to the railroad that, in order to procure title from the United States, *the balance should be paid to the Government.*

It was optional with the Government to join or not to join the purchasers as parties defendant in this case.

The right was with the Government to pursue the railroad company alone for the interest claimed by it.

Williams vs. U. S., 138 U S., 514, 516.

Furthermore, the acts of 1887 and 1896 extend protection to the *bona fide purchasers, not to the railroad.*

By reason of these acts, it became a legal duty of the Government to execute proper conveyance to such purchasers.

This is required by Section 2 of the act of March 2, 1896, by Section 4 of the act of March 3, 1887, and by the act of February 12, 1896.

The Government, therefore, has a right to annul the wrongful claim of the railroad, in order to convey a full and unclouded title to the purchaser.

U. S. vs. Hughes, 11 How., 552, 568.

Hughes vs. U. S., 4 Wall., 232.

Curtner vs. U. S., 149 U. S., 662, 672, 673.

U. S. vs. Bell, etc., Co., 128 U. S., 362, 368.

There is not a hint or suggestion in the acts of Congress that the Government was to give the purchasers a *greater estate or interest than they had purchased*, yet the Circuit Court erroneously adjudged that the Government had no interest in these lands.

The effect of the decree of the Circuit Court is to give the lands to the railroad.

6. The Circuit Court by its decree erroneously

adjudged that the decree shall not "*cancel or vacate any patent issued by the United States to the said Southern Pacific Railroad Company for lands sold by it to a bona fide purchaser.*" (record 362.)

The purpose of this suit was to *determine* as between the United States and the defendants, the title to the lands sued for, and the effect of the decree is to leave that matter undetermined.

Such a provision as this, refusing to determine the rights of the parties, was criticised by the court in Southern Pacific Railroad vs. United States, 168 U. S., 65, 66.

It does not appear from the evidence that any lands patented to the railroad have been sold to bona fide purchasers, except as to the 30,000 acres above referred to, which the court adjudged had been sold and as to which adjudication it is contended the court erred.

The Circuit Court gave the Government a decree with a string attachment which leaves open as to all the land the very question sought to be determined.

The Government was entitled to a decree for all of the lands sued for.

This point is more fully discussed in the "Eighth Point" of the brief.

In conclusion of the brief upon *res adjudicata* it is submitted that the claims here made to these lands by the Southern Pacific Railroad Company and by Mills and King, trustees under the mortgage of 1875, and Central Trust Company, trustee under the mortgage of 1888, have been finally and conclusively determined against them by the former adjudications.

And as it appears that as to the 30,000 acres contracted to be sold, upon which only a partial payment has been made, that the Southern Pacific Company still wrongfully holds the legal title to these lands and all equitable rights in them, except as to the portion of the purchase price paid, and that the Government is entitled to a decree against the defendants for these lands, *and for the interest which the defendants have in them* The decree should be affirmed upon the appeal of the Southern Pacific Company and reversed upon the appeal of the Government with direction to enter a decree as indicated.

If these views find support in the opinions of your Honors, it will be unnecessary to consider any aspect of the case upon the merits.

Second Point.

UPON THE MERITS.

NEITHER THE SOUTHERN PACIFIC GRANT, MADE BY SECTION 18 OF THE ACT OF CONGRESS OF JULY 27, 1866, OR JOINT RESOLUTION OF JUNE 28, 1870, HAD ANY OPERATIVE EFFECT UPON ANY OF THE LANDS WITHIN THE THIRTY-MILE LIMITS OF AND APPERTAINING TO THE ATLANTIC AND PACIFIC GRANT.

The charter of the Atlantic and Pacific Railroad (Act of July 27, 1866), in Section 1, lays down the route as follows:

"Beginning at or near the town of Springfield, in

the state of Missouri, * * * thence to the town of Albuquerque, on the river Del Norte, and thence by way of Agua Frio, or other suitable pass, to the headquarters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude as near as may be found most suitable for a railway route to the Colorado river, at such point as may be selected by said company for crossing, and thence by the most practical and eligible route to the Pacific."

The grant of lands to the Atlantic and Pacific in the state of California, contained in section 3 of the act, was of every alternate section for twenty miles on each side for lands in place, and ten miles further on each side within which the company was authorized to select indemnity, making thirty miles on each side, or the alternate sections for sixty miles in width altogether.

The act provided in section 6, that a withdrawal should be made for the company.

Section 18 of the act provided as follows:

"Section 18. *And be it further enacted*, That the Southern Pacific Railroad, a company incorporated under the laws of the state of California, is hereby authorized to *connect with the said Atlantic & Pacific Railroad*, formed under this act, *at such point near the boundary line of the state of California, as they shall deem most suitable for a railroad line to San Francisco;* and shall have a uniform gauge and rate of freight or fare with said road, and, in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided; and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic & Pacific Railroad herein provided for."

The Southern Pacific Railroad Company, which was authorized to connect with the Atlantic and Pacific Railroad "near the boundary line of the state of Cali-

fornia," was a corporation created in December, 1865, under the laws of the state of California, and the articles of incorporation of the Southern Pacific Railroad Company authorized that company to construct a single line of railroad, described in the articles as follows:

"from some point on the Bay of San Francisco, in the state of California, through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego; thence eastward through the said county of San Diego to the eastern line of the state of California." [rec. 527.]

The act of the Legislature of the state of California, approved November 29, 1865, by authority of which the Southern Pacific Railroad Company was organized, provided in section 18, as follows:

" * * * Nothing in this act shall be so construed as to confer any powers on such companies to so change their road as to avoid any point named in their said articles of incorporation, except as provided in section 17, subdivision 7, of this act."

And by subdivision 7, of section 17, it was provided:

"But no such change shall vary the general route of said road as contemplated in the articles of association of said company."

The Charter of the Atlantic and Pacific Company did not fix the point upon the Pacific where that company was required to make its western terminus. The last point of latitude mentioned in the charter was the thirty-fifth parallel, and from thence the company was required to locate to the Pacific "*by the most practicable and eligible route.*"

The Atlantic and Pacific Company explored the routes from the Colorado to the Bay of San Diego, and

also from the Colorado to San Pedro, and also from the Colorado by the Soledad Pass to the Pacific ocean at San Buenaventura, and eventually fixed upon the latter route, as the most practicable and eligible, and filed maps of definite location upon that line in 1872, which were approved by the Government that year.

From San Buenaventura the company proceeded to locate its route and file maps thereon to San Francisco, but the Government rejected that part of the line between San Francisco and the Pacific ocean at San Buenaventura, and which action this court said, in the former cases in 146 U. S., 570, was entirely proper, for that the land grant of the company was exhausted when it reached the Pacific ocean at Ventura.

The charter of the Southern Pacific Railroad Company authorized the construction of the line of road of that company *from San Francisco* through the county of *Los Angeles to San Diego,* and thence east to the Colorado, and such line might have intersected the Atlantic and Pacific Railroad at or near San Buenaventura, the western boundary of the State, or near San Pedro, also on the western boundary, or at San Diego, near the southern boundary, depending upon the point where the Atlantic and Pacific might reach the coast.

That Congress contemplated and intended that the connection of the Southern Pacific with the Atlantic and Pacific should be made at or near one of these points, and not upon the Colorado river at Needles, is made certain from the following considerations:

(1) That the line down the coast prescribed in the

charter of the Southern Pacific Company was the only line of route which that company was authorized to construct upon which could have intersected and connected with the Atlantic and Pacific Railroad, and the charter powers of the Southern Pacific must have been known to and understood by Congress.

(2) The laws of California forbade the Southern Pacific Company from constructing a railroad upon any other line than that described in the charter or articles of incorporation.

(3) The purpose of Congress in incorporating the Atlantic and Pacific Company, and providing for its construction with the aid of an enormous land grant, was, as expressed in the act, "to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast," for Governmental and other public purposes. Congress had already provided for the construction of a railroad from Omaha to San Francisco by the Union Pacific and Central Pacific Railroad. Therefore, the purpose was to construct another railroad to the Pacific at some other point, and the contention of counsel for the Southern Pacific that that company was authorized to intersect the Atlantic and Pacific Railroad at *Needles on the Colorado* and *parallel* the Atlantic and Pacific Railroad for two hundred and fifty miles in California, would operate to wholly *defeat* the purpose of Congress, to secure the construction of the Atlantic and Pacific Railroad to the Pacific Coast, with a Southern Pacific branch from the connection to San Francisco.

(4) The contention that Section 18 authorized the Southern Pacific Company to construct from San Francisco via Mojave, to the Colorado at Needles, is repugnant to and inconsistent with the settled principle that where a grant of lands is made by Congress to aid in the construction of a railroad, the railroad must be constructed upon the *nearest practicable route*, and a connection with the Atlantic and Pacific Railroad at or near Ventura where it was located, near the western boundary of the state, would be more than two hundred and fifty miles shorter than the long and devious route by Mojave to the Colorado river.

The Southern Pacific Railroad Company never filed any map of general route or of definite location, and never constructed any railroad upon the line prescribed in its charter, which it was authorized to build upon at the time of the passage of the act of July 27, 1866, and therefore has never acquired or earned any lands, or rights to lands, under that act.

Notwithstanding the plain provisions of the laws of California and the route fixed in the charter of the Southern Pacific Company, and the existing grant to the Atlantic and Pacific Railroad from the Colorado to the Pacific, and the settled principles governing the construction of such grants, the Southern Pacific Company illegally and improperly filed, or offered to file, in the Interior Department, on January 3rd, 1867, a map of its proposed *general or preliminary route* for a line of railroad *from San Francisco, via Mojave, to the Colorado river at Needles.*

Upon filing this map in 1867, it was thereafter contended by the Southern Pacific Railroad Company, for more than three years, that the route was authorized by the act of Congress of 1866; but *three successive Secretaries of the Interior*, viz., Secretaries Browning, Cox and Delano, adhered to their respective rulings and decisions, that the map of 1867 was upon a route wholly unauthorized by the charter of the Southern Pacific Company by the laws of California, and not contemplated by the act of Congress of 1866, and that the lands upon the line of that route theretofore withdrawn should be restored to the public domain and to entry.

At different times during this period of more than three years, the Southern Pacific Railroad Company from time to time succeeded in securing from the Interior Department orders suspending the rejection of the map and restoration of the lands, and as often thereafter the Secretary of the Interior would set aside the suspensions and order the lands restored.

A chronological statement of these various orders and decisions of the Secretaries of the Interior, from 1867 down to 1870 inclusive, are set forth in the appendix hereto, in "Table of Dates, appendix (3)."

That the map of 1867 was a map of general route, or of preliminary survey, and not a map of *definite location*, is made certain by inspection of the certificate of the officers of the Southern Pacific Railroad Company upon the map itself, in the following words:

OFFICE OF THE SOUTHERN PACIFIC RAILROAD COMPANY, SAN FRANCISCO, CALIFORNIA.

"We hereby certify that this map indicates the route

of the *preliminary survey* of the Southern Pacific Railroad, and as such was adopted and approved by a vote of the Board of Directors of the Southern Pacific Railroad Company at a meeting held at their office in the city of San Francisco, on the 22nd day of September, *A. D.* 1866.

"In witness whereof we have hereunto set our hands and seals this 29th day of September, *A. D.* 1866.

"(Signed) A. G. PHELPS,
"*President Southern Pacific Railroad Company.*

"CHARLES N. FOX,
"*Secretary pro tem. Southern Pacific R. R. Co.*

"WILLIAM I. LEWIS,
"*Chief Engineer Southern Pacific R. R. Co.*"
[record 1400.]

This map of general route was received on January 3, 1867, by the Secretary of the Interior, and transmitted to the Commissioner of the General Land Office.

On March 19, 1867, Browning, Secretary of the Interior, ordered a withdrawl of lands within thirty-mile limits upon the map of 1867, *but expressly reserved future consideration as to conflict with routes of other railroads.* [rec. 1273, 1274.]

Secretary of the Interior Browning, in his decision of July 14, 1867, upon full consideration and argument, decided that the map of 1867, offered by the Southern Pacific Railroad Company, was wholly unauthorized, and ordered the lands appertaining to that line of road to be restored to the public domain. [record 1275, 1280.]

The Southern Pacific Railroad Company brought the matter up again before Secretary of Interior Cox, on

November 2, 1869, and the decision there rendered was against the validity of the map. [record 921, 923.]

On November 11, 1869, the Southern Pacific Company got a re-hearing of the matter again before Secretary Cox, and in his decision he said:

"I am clearly of opinion that when there is a grant by Congress of land to a railway company organized under a state law, for the purpose of constructing a road, the lands can only be withdrawn upon the authorized route of such road. Congress did not assume to confer upon an existing company in California the right to construct a road not authorized by its articles of association or to diverge from the route which they prescribe."

"It would be a singular anomaly if Congress should empower a state corporation to do an act expressly forbidden by a law creating it, which the state had the constitutional power to enact. The withdrawal was, I am satisfied, not warranted by the act of July 27, 1866."

"I now return my decision of the 2nd inst. and you will instruct the local land officers to restore the lands withdrawn in 1867 to their former status after sixty days' public notice by advertisement." [record 889, 892.]

Secretary of the Interior, Delano, in his decision of May 9, 1873, adhered to the decisions of his predecessors, that the Southern Pacific Railroad Company was not authorized to construct any line of railroad upon the route shown by the map of 1867 [record 1301, 1305], and in that decision said:

"By the act of July 27, 1866 (14 Stat., 292), the Southern Pacific Railroad, a company incorporated under the laws of the state of California, was authorized to connect with the Atlantic & Pacific Railroad at such point near the boundary line of the state of Cali-

fornia as it should deem most suitable for a railroad line to San Francisco and was granted to aid in its construction every alternate section of public land. * *

"This Southern Pacific Company located its line and filed a map of the same in the Interior Department January 3, 1867, and thereupon on the 22nd day of March, 1867, a withdrawal was directed of the odd sections that would inure to the road. Subsequently it was shown to the satisfaction of Secretary Browning that the location made by the Southern Pacific was not in accordance with the law of California, under which the company was created, and he, on the 14th of July, 1868, revoked his former order of withdrawal and directed a restoration of the lands withdrawn. * * * Mr. Secretary Cox, Nov. 2, 1869, affirmed the decision of his predecessor that the Southern Pacific was improperly located. * * * On the 15th of December, 1869, at the request of Senator Howard, chairman of the senate committee on the Pacific Railroad, *and upon a suggestion that legislation was contemplated*, he suspended his order of restoration made on the 2nd of November, as aforesaid."

Secretary Delano referring to the passage of the joint resolution of June 28, 1870, then says:

"*It operates as a grant to the road in praesenti and is the first authority given to the company to construct its road upon the line selected. It makes such grant to the same extent and for the same amount and subject to all the conditions and restrictions specified in the third section of the act of July 27, 1866. One of those conditions is that the grant shall not operate upon any lands reserved at the time the line of the road was designated by a plat filed in the office of the Commissioner of the General Land Office.*"

On April 4, 1870, the Southern Pacific Railroad Company became satisfied that the map of 1867 could not be imposed upon the Government, and that it could not without further legislation from the Legislature of

Califorina and from Congress connect with the Atlantic and Pacific Railroad upon the *eastern* boundary of the state; and thereupon procured the passage of an act of the Legislature of California, approved April 4, 1870, which provides as follows:

"Said company (Southern Pacific Railroad Company), its successors and assigns, are hereby *authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the state of California* by such route as the company shall determine to be the most practicable; * * * * hereby confirming to and vesting in said company, its successors and assigns, all the rights, privileges and franchises, power and authority conferred upon, granted or vested in said company by said acts of Congress, and any acts of Congress which may be hereafter enacted." (see Appendix.)

Armed with this authority from the state the Southern Pacific Railroad Company then procured the passage of a joint resolution by Congress approved June 28, 1870, which provided as follows:

"Be it resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, that the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven, and upon the construction of each section of said road in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the Com-

missioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminus to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, *expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act.*"

Fifteen years after the passage of this joint resolution, and in the year 1885, the Southern Pacific Railroad Company constructed a line of railroad from Mojave to the Colorado river at Needles, somewhat upon the line of route shown by the map of 1867, but varying from it at points a distance of more than thirty miles, and getting entirely outside of the thirty-mile limits, as shown by the map of 1867.

The Southern Pacific Company filed maps in the Interior Department in 1885, showing its line of railroad between Mojave and Needles as definitely located and constructed [rec. 1158, 1159], and the land grant of the Southern Pacific was adjusted according to these maps of constructed road, which were taken by the company and by the Interior Department as maps of definite location, as no other maps were filed by the Southern Pacific Company.

Case of Southern Pacific Railroad, 25 L. D., 223, 229.

The Southern Pacific maps filed in 1885 from Mojave to Needles were the first and only maps of definite location between those points filed by that company.

The map of 1867 was, as before shown, certified by the company to be a map showing *preliminary survey of a proposed route*, and it was filed as such and treated as such by the Government.

As all the lands involved in this case lie south and east of Mojave, it is unnecessary to refer to any other maps of the Southern Pacific main line *definite location* than those sections between Mojave and the Colorado river.

These several sections of the map of definite location all contain upon their face certificates of the officers of the Southern Pacific Railroad Company certifying that the map shows the true and correct location of the Southern Pacific Railroad, and the certificate upon section *eleven* [rec. 1158], which is similar to the others, is as follows:

"Map and Profile of Section No. Eleven of the Southern Pacific Railroad and Telegraph Line."

"Commencing at a point at the end of the 141.61 mile on the line of said railroad southeasterly from the intersection of the Southern Pacific Railroad with the San Joaquin Valley Branch of the Central Pacific Railroad, said point of commencement being in the northeast quarter of section 17, township 11 north, range 12 west, San Bernardino Meridian, and running thence in an easterly direction forty miles to a point in the northeast quarter of section 6, township 10 north, range 6 west, San Bernardino Meridian"

"I, George E. Gray, chief engineer of the Southern Pacific Railroad Company, certify *that this is a correct map of the forty-mile line of the said road, showing the line in connection with the lines of the public survey*, between the end of section number ten of said railroad * *

and a point on said road forty miles easterly therefrom * * showing the radii and lengths of curves and courses of tangents, with full and correct delineations of all topography within three thousand feet of said line on either side thereof, and with other topographical facts controlling or influencing the location of said line, or showing reasons therefor, and giving the crossings of all streams. * * *

"GEORGE EDWARD GRAY,

"*Chief Engineer of the Southern Pacific Railroad Company.*"

"Subscribed and sworn to before me, William T. Sesnon, Clerk of the Superior Court in and for the city and county of San Francisco, state of California (the same being a court of record), this 26th day of December, *A. D.* 1884, as witness my hand and seal of said court.

"WILLIAM T. SESNON,

"*Clerk of the Court Aforesaid.*"

"*State of California,*
City and County of San Francisco. } *ss.*

"George E. Gray, of San Francisco, in said county and state being duly sworn, deposeth and says, that he is the chief engineer of the said railroad from the end of section number ten of said railroad to a point forty miles easterly therefrom, as set forth above, being for the eleventh section of forty miles as shown by the line of route in connection with the lines of the public surveys on this map, that it has been completed and equipped as required by law, *and that this line of route shows the correct location of the said railroad.*

"GEORGE EDWARD GRAY,

"*Chief Engineer of the Southern Pacific Railroad Company.*"

"Sworn and subscribed this 20th day of December, A. D. 1884, before me, Charles J. Torbert, Notary Public in and for said city and county of San Francisco, state of California."

"OFFICE OF THE SOUTHERN PACIFIC RAILROAD COMPANY, SAN FRANCISCO, CAL.

"It is hereby certified that George E. Gray is the

chief engineer of the Southern Pacific Railroad Company *and that the location of the road as represented on this map is correct and approved by the Company*, and also that the said portion of the said road has been completed and equipped in all respects as required by law.

"CHAS. CROCKER,
"*President of the Southern Pacific Railroad Company.*
"Attest: [SEAL.] JOSEPH L. WILLCUTT,
"*Secretary of the Southern Pacific Railroad Company.*"

[Endorsed on the map] "Department of the Interior. L. & R. R. Div. Received Jan 7, 1885."

The act of July 27, 1866, which governs the terms and conditions of the Southern Pacific grants, *provides by section 6 for the filing of a map of general route* and by section 3 *for the filing of a map of definite location.* On filing the map of general route a temporary withdrawal was to be made to preserve the lands for the company, but no rights attached to any particular lands. On filing map of definite location the grant took effect. The Southern Pacific Railroad Company, as well as the Interior Department, recognized that there was a wide difference between a map of general route and a map of definite location, and it was held in the Interior Department, in several well considered cases, that no rights attached in the Southern Pacific Railroad on filing its map of general route. See

Southern Pacific Railroad 25, L. D., 223, 229.

Southern Pacific Railroad vs. McWharter, 14 L. D., 610, 612.

Morgan vs. Southern Pacific Railroad, 11 L. D., 582.

This court clearly pointed out that the Southern

Pacific grant, governed by the act of 1866, requires by section 6 a map of *general* route, and by section 3 one of *definite location*, and that the former confers no rights to lands.

U. S. vs. Southern Pacific, 146 U. S., 570, 597, 599.
Southern Pacific vs. U. S., 168 U. S., 1, 42.

Southern Pacific Company Adopts Line of Definite Location.

Before filing maps of definite location upon the main line grant above set forth, the Southern Pacific Railroad Company, by its Board of Directors, determined upon and adopted that line of definite location. This was done by a series of resolutions of the Board of Directors. [rec. 1805, 1810.]

Southern Pacific Maps of Definite Withdrawal (Main Line).

As each section of the definite location of the Southern Pacific main line was filed in the General Land Office, maps of *definite withdrawal* were prepared by that office and transmitted to the several local United States land offices in California, ordering the lands to be reserved within the twenty and thirty-mile limits, showing that line with the twenty and thirty-mile limits of the land grant adjusted thereto.

On August 2, 1878, the Secretary of the Interior decided in a number of cases, and notably in the case of Samuel Tome, that lands settled upon prior to the passage of the joint resolution of June 28, 1870, were excepted out of the Southern Pacific grant. [rec. 897.]

A comparison of the map of general route of 1867 with the map of definite location of 1885, will show that those lines of route were widely divergent. At township 17 south, Mount Diablo base, the routes are ten miles apart. At township 28 south, the lines are about twelve miles apart. In San Bernardino county at ranges 12 and 13 east, S. B. Meridian, *the lines of route are more than thirty miles apart and at that point for a considerable distance the line of definite location is wholly outside of the thirty-mile limits shown by the map of general route of 1867.*

In the recent case of Southern Pacific Railroad Company, 25 L. D., 223–229, the Secretary of the Interior formally accepted the Southern Pacific Railroad between Mojave and Needles and in that decision said:

"The map of 1867 was not filed as a map of definite location, but rather as a map of general route. This department had held that the route indicated upon said map was not possible under its state charter, and, therefore, revoked the withdrawal order upon said route. The passage of the resolution was, therefore, to permit the construction along the general route indicated, and not to restrict the company to the exact location shown upon said map."

"This department has never treated the line of 1867 as the definite location of the road, but has adjusted the limits of the grant to the road actually constructed."

That Congress did not make a grant to the Southern Pacific from Mojave to Needles in the act of 1866 is not a question of "*corporate capacity*" as argued by defendants. Of course, questions of abuse of corporate powers and franchises can ordinarily be raised only in direct proceedings, but this is a question of *construction*

of legislation. The question here is as to whether Congress made a grant upon that line by the act of 1866, and we think we have fully shown from the language employed by Congress, from the charter of the company, which determined what line the company could build upon, from the act of the legislature, and Interior Department decisions for many years, and from the acts of the company, that it was never contemplated that the act of 1866 made such a grant, but that the first and only grant made upon the route shown by the map of 1867 was made by the joint resolution of 1870, and that grant excepted from its operation all lands *reserved* and *claimed* prior to the Southern Pacific's definite location.

(2) Congress intended in Section 18 of the act of July 27, 1866, that the Southern Pacific should connect with the Atlantic and Pacific upon the western or southern boundary of California upon the chartered route of the Southern Pacific *from San Francisco through Los Angeles county to San Diego.*

The route laid down in the charter of the Southern Pacific Company is deemed to be read into the Congressional act making the land grant to that company, as it is conclusively presumed that Congress had such line of route in contemplation.

In Railway Co. vs. Alling, 99 U. S., 463, at p. 474, the court said, referring to a grant to a state corporation:

"Of what the company had done, prior to the passage of the act of 1872, towards effecting the objects of its incorporation, Congress, it is fairly to be presumed, was not uninformed. It was aware, we must also pre-

sume, of the routes designated in the charter of the company, for the main road and its several branches, all so connected as to constitute, when completed, an extended railway system for that entire region. That Congress was so informed is quite clearly indicated by the terms employed in the act of 1872. *That act must, therefore, receive the same construction which would be adopted had it contained a full or detailed description of the routes of the main line and branches.*"

In Washington Railroad vs. Cœur D'Alene Railway, 160 U. S., 77 at p. 99, the court said:

"We are unable to accept such a view of the law, but concur in the conclusion of the court below that the language of the act of Congress, under which both parties claim, wherein it provides that 'the right of way through the public lands of the United States is hereby granted to any railroad company duly authorized under the laws of any state or territory, which shall file with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization under the same, to the extent of a hundred feet on each side of the central line of said road,' *plainly means that no corporation can acquire a right of way upon any line not described in its charter or in its articles of incorporation;* that it necessarily follows that no initiatory step can be taken to secure such right of way by the survey upon the ground or otherwise; that until the power to build the road upon the surveyed line was in a proper manner assumed by or conferred upon the plaintiff company, its acts of making surveys were of no avail; and that, so far as the conflicting rights of the parties to this controversy are concerned, the status of the plaintiff is the same as if its survey of October 28, 1885, had not been made."

These decisions of the court are in harmony with those of Secretaries of the Interior, Browning, Cox and Delano, before mentioned, in which they rejected the Southern Pacific map of 1867 as being upon an unauthorized route.

(3) Congress intended in section 18 of the act of 1866 that the Southern Pacific should connect with the Atlantic and Pacific by the *shortest practicable route* from San Francisco.

The Atlantic and Pacific Railroad was on or about the thirty-fifth parallel of latitude on the Colorado river, and from thence it was required to construct to the coast. That, of course, under the act, would have to be by a near and practicable route.

The direct route of the Southern Pacific, from San Francisco to Ventura, where the western terminus of the Atlantic and Pacific was in fact fixed, was more than *two hundred and fifty miles shorter* than the route *via* Mojave to Needles.

It has long been settled that where the termini of a land-grant-aided railroad are mentioned in an act of Congress, the railroad must be constructed upon the *shortest practicable route*, and if there is an unnecessary deviation it will be rejected.

St. Paul R. vs. Northern R., 139 U. S., 1.

U. S. vs. Northern Railroad, 152 U. S., 284, 292.

U. S. vs. S. P. R., 146 U. S., 570 at page 596.

(4) The grant to the Southern Pacific by the joint resolution of June 28, 1870, as before mentioned, provided that it was subject to the "*conditions and restrictions provided for in the 3rd section of said act*," referring to the act of July 27, 1866, and by Section 3 of the former act it was provided that the grant was of those lands only, "*not reserved, sold, granted or otherwise appropriated and free from preemption or other claims or rights at the time the line of said road is designated by a plat thereof* * * * ."

And it was further provided, in section 3:

"That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been granted by the United States, so far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

Both of these provisions in section 3 of the act excluded from the Southern Pacific grant all the lands pertaining to the Atlantic and Pacific Road, not only because they were reserved for and claimed by the Atlantic and Pacific, but because they were upon the general lines of both the Atlantic and Pacific and Southern Pacific roads.

United States vs. Southern Pacific, 146 U. S., 570, at p. 605.

The Atlantic and Pacific grant had been located by approved maps of definite location in 1872, and the maps filed by the Southern Pacific under the joint resolution of 1870, were filed in 1885.

Independent of the express provision of the joint resolution of 1870, that the grant should not operate upon lands previously granted, reserved or claimed, the authorities are altogether in support of the view that the grant of 1870 cannot be antedated as of the date of the act of July 27, 1866, as contended by counsel for the Southern Pacific.

In the United States vs. Southern Pacific Railroad, 146 U. S., 570, it was contended by counsel for the Southern Pacific that Section 23 of the act of Congress of March 3, 1871, which authorized the Southern Pacific Railroad Company to construct a railroad from

Mojave via Los Angeles to Yuma, "*with the same rights, grants and privileges and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July 27, 1866* * * *," was to be construed as having taken effect *on July 27, 1866*, and as an amendment of that act.

Considering this contention of counsel the court said (146 U. S., 595):

"It matters not that the act of 1871 in terms purports to bestow the same rights, grants and privileges as were granted to the Southern Pacific Railroad Company by the act of 1866. That merely defines the extent of the grant and the character of the rights and privileges; it does not operate to make the latter grant take effect by relation as of the date of the prior grant, and thus subject the grants to the two companies to the rule controlling cotemporaneous grants, as established by *St. Paul & Sioux City Railroad vs. Winona & St. Peter Railroad*, 112 U. S., 720 and *Sioux City & St. Paul Railroad vs. Chicago, Milwaukee, etc., Railway*, 117 U. S., 406. *Even if Congress had in terms expressed an intent to that effect in a subsequent act, it was not competent, by such legislation, to divest the rights already vested in the Atlantic and Pacific Company.*"

In St. Paul Railroad vs. Northern Pacific Railroad, 139 U. S., 1, the facts were that by the act of Congress of March 3, 1857, a grant was made to Minnesota to aid in constructing a railroad from Stillwater by St. Paul to Big Stone Lake, and thereafter by the act of March 3, 1865, Congress enlarged the grant of 1857 and for its terms and conditions referred to the former act of 1857.

In the meantime, and in 1864, Congress made a grant through the same territory to the Northern Pacific

Railroad and the court held that the act of 1865 did not relate back to the act of 1857, but was to be treated as a *new grant*, and the court said at page 15:

"The act of March 3, 1865, as above stated, is a new grant referring to but distinguishable, and distinct from that made by the act of March 3, 1857,"

And the court further said:

"It is, however, contended in answer to this position of an earlier grant to the plaintiff that the acts of March 3, 1865, and March, 3, 1871, are to be treated not as distinct acts but simply as amendments to the act of March 3, 1857, and to be given an operation as of that date. We do not assent to this position. Though the act of March 3, 1865, by its new and additional grants, amended the previous act of 1857, its operation upon any lands previously reserved to aid in any work of internal improvements were expressly restrained. What was reserved before, remained reserved afterwards."

The case of United States vs. Northern Pacific Railroad, 152 U. S., 284, is strongly in point.

In that case the act of Congress of 1864 granted to the Northern Pacific Railroad lands in aid of the *main line* of that railroad "from Lake Superior * * * to some point on Puget Sound, with a branch via the valley of the Columbia river to a point at or near Portland in the state of Oregon, leaving the main trunk line at the most suitable place not more than 300 miles from its western terminus."

The joint resolution of Congress of May 31, 1870, authorized the Northern Pacific Railroad to construct its *main line* down the Columbia river to Puget Sound with its *branch line* from a point across the Cascade mountains to Puget Sound with the same grant of lands as was made by the act of 1864.

In the meantime Congress made a grant to the Oregon Railroad through the territory covered by the Columbia-river line, and the court held that the joint resolution of 1870, while it authorized the construction of the *main line* down the Columbia river to Puget Sound, was to be considered as a *new grant* and subject to the grant to the Oregon Company, made by the act of Congress of May 4, 1870, and the court said at page 294:

"Undoubtedly this resolution (May 31, 1870) gave authority to locate and construct a main road via the Columbia river valley to Puget Sound A road so located and constructed would or might have passed the city of Portland. But if, as the company now insists, the act of 1864 gave ample authority to locate and construct a road extending from Lake Superior to Puget Sound along the valley of the Columbia and by the way of Portland or its vicinity, the resolution of 1870 was entirely unnecessary in so far as it gave authority to the company to locate and construct its road through the Columbia river valley to some point on Puget Sound. We cannot agree that this resolution is to be held in this respect as simply a recognition by Congress of an existing right in the company to locate and construct a road from Portland to Puget Sound with the right to obtain lands in aid thereof, as provided in the act of 1864. On the contrary, it should be regarded as giving a subsidy of land in aid of the construction of a *new road*, not before contemplated, that would directly connect Portland and its vicinity with Puget Sound."

In any possible view of the case the benefits which the Southern Pacific Company received by the passage of the joint resolution of June 28, 1870, were accepted and taken, subject to the express condition that the grant should not operate upon any lands previously

granted, sold, reserved or otherwise appropriated, and free from *claims* at the time of *the definite location of the road.*

By the terms of the resolution of June 28, 1870, therefore, the Southern Pacific "main line grant" took effect through the lands in controversy in the year 1885, when it filed its map of definite location, and by the terms of that grant the lands then granted, reserved, otherwise disposed of, and *claimed* were excepted out of the Southern Pacific grant which included the lands reserved by the accepted Atlantic and Pacific maps filed in 1872.

In conclusion of this point of the brief, we submit that the following propositions are established beyond any question:

First. That the resolution of June 28, 1870, was a new and distinct grant, and when passed, these lands had been granted to the Atlantic and Pacific Railroad Company, and that company had a vested right to them.

Second. That by the terms of the act of June 28, 1870, lands granted, reserved, claimed or disposed of prior to definite location and also lands on the general line of the Atlantic and Pacific road were excluded from the operations of the grant, and these lands were then identified and reserved from the filing of the map of definite location of the Atlantic and Pacific Railroad; the filing and approval of which operated in law to reserve the lands within the indemnity, as well as within the primary limits of the grant.

Third. That when the Southern Pacific Company filed its map of definite location from Mojave to the Colorado river at Needles, all of these lands were set apart and reserved by executive orders of the United States.

Fourth. That it was not the *intention* of Congress to grant any of these lands to the Southern Pacific Company, and there is no difficulty in giving effect to such intention because the lands have been identified by the maps of definite location, as well as by the maps of definite *withdrawal* for the Atlantic and Pacific Company, and this act of the Executive Department gave identity and precision to the grant.

Upon principle, as well as upon authority, this branch of the case cannot be distinguished from

United States vs. Southern Pacific Railroad, 146 U. S., 570.

United States vs. Southern Pacific Railroad, 146 U. S., 619.

Southern Pacific Railroad vs. United States, 69 F. (C. C. A.) 47; and 168 U. S., 1, 66.

United States vs. Northern Pacific Railroad, 152 U. S., 284.

Lake Superior Railroad vs. Cunningham, 155 U. S., 354.

St. Paul Railroad vs. Northern Pacific Railroad, 139 U. S., 1.

Bardon vs. Northern Pacific Railroad, 145 U. S., 535.

Whitney vs. Taylor, 158 U. S., 85.

Northern Pacific Company vs. Musser-Company, 168 U. S., 604, 610, 611.

Third Point.

SOUTHERN PACIFIC "BRANCH LINE" GRANT DID NOT OPERATE ON ATLANTIC AND PACIFC GRANT, PRIMARY OR INDEMNITY LIMITS.

Under the act of March 3, 1871, the Southern Pacific Company filed its map of general route on April 3, 1871, and its map of definite location in five sections during the years from 1874 to 1878, and the Atlantic and Pacific Company, under its grant of July 27, 1866, filed its map of definite location in 1872. at which time all the lands within the thirty-mile limits were withdrawn and reserved. None of these lands could pass to the Southern Pacific Company under its grant of 1871.

First. The lands within the forfeited Atlantic and Pacific grant, claimed by the Southern Pacific Company under its branch line grant were therefore granted to the Atlantic and Pacific Company long before any grant was made to the Southern Pacific Company.

Second. Long before the Southern Pacific Company filed its map of definite location these lands had been withdrawn and reserved by operation of law upon the filing and approval of the Atlantic and Pacific map of definite location, which had the effect of reserving the lands within the granted, as well as indemnity, limits.

Third. When the Southern Pacific Company filed

its map of definite location these lands had long before been set apart and reserved by *executive orders* of the Government.

Fourth. That it was not the *intention* of Congress to grant these lands to the Southern Pacific Company.

Upon the authorities last above cited, it is submitted that none of these lands can pass under the act of March 3, 1871, to the Southern Pacific Company.

Fourth Point.

WHEN THE SOUTHERN PACIFIC FILED ITS MAP OF DEFINITE LOCATION ON THE MAIN LINE BETWEEN MOJAVE AND NEEDLES IN 1885, AND UPON THE BRANCH LINE BETWEEN MOJAVE AND YUMA BETWEEN 1874 AND 1878, THESE LANDS WERE RESERVED.

(1) As shown to the court in the statement of the case, and as also shown in the table of dates in appendix (3), the maps of definite location of the Atlantic and Pacific Company were approved in 1872, and by executive orders all of the land falling within the thirty-mile limit was withdrawn and reserved before the Southern Pacific Railroad Company had filed any section of its map of definite location upon either its main or branch line covering the lands within the Atlantic and Pacific grant.

It is true the Southern Pacific filed its map of general route on the main line in 1867, and on the branch in 1871, but did not file any section of its map of defi-

nite location until 1885 on the main line east of Mojave, nor until 1874 on the branch. The general route location gave no right to any tract of land, and the right of disposal remained with the Government.

Kansas Railroad vs. Dunmeyer, 113 U. S., 629.

U. S. vs. Southern Pacific Railroad, 146, U. S., 570, 599.

Southern Pacific vs. United States, 168 U.S., 1, 41, 42.

New Orleans Railroad vs. Parker, 143 U. S., 42, 57.

United States vs. Oregon Railroad, 176 U. S., 28.

Southern Pacific vs. Sanders, 166 U. S., 620, 636.

Independent of the effect of the prior adjudications against the Southern Pacific Company and its privies, and independent of any filing of any map of definite location by the Atlantic and Pacific Company, taking effect by relation, as of the date of the grant, the *executive withdrawal* of these lands before the Southern Pacific grants attached operated to except them and exclude them from either of the grants of the Southern Pacific Railroad Company.

Lands so reserved by executive orders, when the map of definite location is filed, *cannot be operated upon* by the grant subsequently made.

Wilcox vs. Jackson, 14 Pet., 498.

Musser-Sauntry Co., 168 U. S., 604, 610, 611, and cases there cited.

Wolcott vs. Des Moines Co., 5 Wall, 681.

Wolsey vs. Chapman, 101 U. S., 756.

United States vs. Missouri Railroad, 141 U.S., 374.

Hamblin vs. Western Land Co., 147 U. S., 358, 531.

Wisconsin Railroad vs. Forsythe, 159 U. S., 46, 54.

(2) By the terms of section 3 of the act of July 27, 1866, there is excluded from the operation of the grant of the Southern Pacific Railroad Compauy all lands covered by "*other claims*" at the time of the definite location.

The language of this section of the Atlantic and Pacific and Southern Pacific act is identical with that contained in the Congressional grant of July 2, 1864, to the Northern Pacific Railroad

In Northern Pacific Railroad Company vs. Sanders, 166 U. S., 620, 634, 636, it was held that lands *claimed* at or prior to the time of the definite location of the Northern Pacific grant were excepted from the operations of the act, and that a mineral location, whether valid or otherwise, constituted such a claim.

In Monetti vs. Dillon, 167 U. S., 703, it was held that a "lawful claim" to lands within the limits of the Central Pacific grant which existed at or before the time of definite location, operated to except such land from the railroad grant, and that the withdrawal on the map of general route of the Central Pacific Company did not prevent such claim from attaching prior to definite location.

The fact that the Atlantic and Pacific Company *claimed* these lands as a part of its grant by virtue of what it claimed were maps of definite location, which claim was made effective from the year 1872, when the maps were filed, down to the forfeiture of the grant in 1886, would in itself operate to exclude these lands from the grants.

The rulings in Northern Pacific vs. Sanders, supra and Monetti vs. Dillion, supra, clearly support this view.

Fifth Point.

LANDS WITHIN GRANTED AND INDEMNITY LIMITS OF ATLANTIC AND PACIFIC GRANT NOT SUBJECT TO SELECTION AS INDEMNITY BY SOUTHERN PACIFIC UNDER ITS GRANTS.

(1) It is now claimed by the Southern Pacific Company that if it is not entitled to take, under its grants, lands within the limits of the Atlantic and Pacific grant as *granted* lands, yet that it may take them as *indemnity* for losses in its place limits.

In the former decisions in 146 U. S., 570, 619, and 168 U. S., 1, 66, it was adjudged that by the act of forfeiture of July 6, 1886, the Atlantic and Pacific grant was forfeited to the United States, and by that act became the "*property of the United States*" (168 U. S., 62), and such forfeiture by the United States was "for *its own benefit* and *not that of the Southern Pacific Company*." (146 U. S., 607.)

The conclusive effect of the former adjudications against the Southern Pacific Company in the present case has been presented in the first point of this brief.

If the lands appertaining to the Atlantic and Pacific grant in California were restored to the public domain "*as the property of the United States*" and "*for the benefit of the United States and not for the benefit of the Southern Pacific Company*," it cannot be that the South-

ern Pacific can take any of these lands as *indemnity* under a pre-existing right conferred by the act of 1866, joint resolution of 1870, or act of 1871.

(2) Aside from the effect of the prior adjudications as *res adjudicata*, the claim of the Southern Pacific that it can select these lands since the forfeiture by the act of 1886 as indemnity has been adjudged against the company as a matter of law.

In Southern Pacific vs. United States (168 U. S., 1) the lands, the subject-matter of that suit, were within both the granted and indemnity limits of the Southern Pacific Railroad Company, and were also within the granted and indemnity limits of the Atlantic and Pacific grant.

In that case the court said (pp. 46, 47):

"It may be said that the lands here in dispute belong to one or the other of the following classes * * * *lands within the Southern Pacific indemnity limits and the Atlantic and Pacific granted limits, lands within the common indemnity limits of both grants*," * * * "but all the lands now in dispute are within the limits of the grant to the Atlantic and Pacific Company if the maps filed by that company in 1872, and which were approved by the Land Department, are to be regarded as maps of definite location."

In that case the decree of the Circuit Court established the title of those lands in the United States and *enjoined* the Southern Pacific Railroad Company *from claiming any interest in them.* That decree was affirmed as to the Southern Pacific Railroad Company *in all respects.* (see 168 U. S., 66.)

The question as to the right of the Southern Pacific to select the Atlantic and Pacific lands as indemnity,

was discussed and argued industriously by counsel, and as ably as the nature of the topic would permit, but the contention was as clearly denied by the court.

Counsel for the Southern Pacific thought the court had "inadvertantly" and "erroneously" affirmed the decree of the courts below affecting the right of the Southern Pacific Railroad Company *subsequently to the passage of the Atlantic and Pacific forfeiture act of July 6, 1886, to select those lands as indemnity* for losses within the place limits, and thereupon presented to the court a petition for re-hearing, in which that question was again argued at great length, but the petition for re-hearing was denied.

The petition for re-hearing of counsel for the Southern Pacific, presenting the question of the right of the Southern Pacific to select the Atlantic and Pacific land as indemnity since the forfeiture of 1886, and presenting other questions argued in this court and disposed of, and which are now again presented to your Honors, is printed in appendix (1) to this brief for the inspection of the court.

It therefore appears that this question is not open for discussion.

Aside, however, from these direct decisions, other considerations of the question are equally against the contention of the Southern Pacific.

Lands Set Apart and Reserved for Atlantic and Pacific Not Operated Upon by Southern Pacific Grants.

(3) It is a well settled principle in the construction

of Congressional grants that lands set apart and reserved by Congress or by other competent authority cannot be taken or *operated upon* by any subsequent grant.

In Wilcox vs. Jackson (13 Pet., 513) the court laid down the rule as follows:

"But we go further and say that whensoever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands and that no subsequent law, or proclamation, or sale would be construed to embrace it or to operate upon it, although no reservation were made of it."

In United States vs. Missouri Railway (141 U. S., 374), in considering the right of a railroad to select as indemnity, lands within the limits of another railroad grant, reserved but not including lands granted to the other railroad, the court said:

"In neither case, however, could lands be selected that had been previously withdrawn by a competent authority from location, sale, or entry, or had been appropriated or sold by the United States, or to which pre-emption or homestead rights had attached."

And the court further said, at page 368:

"The first proviso to the same section reserved and excepted *from the operation of the act* all lands reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatever. Of course, lands so reserved and exempted *from the operation of the act* could not be selected as indemnity lands for the road in aid of the construction of which the grant of 1866 was made."

The court further said at page 371:

"They could not be selected as indemnity lands under

the act of 1863, because the lands to be selected under that act were restricted to *odd numbered sections*, nor under the act of 1866, because *at the date of its passage they were reserved for the special purposes indicated in the second section of the act of 1863.*"

The principle is illustrated in United States vs. Southern Pacific Railroad (*supra*), where it was held that lands within the *indemnity* limits of the Atlantic and Pacific grant could not be taken as granted lands by the Southern Pacific Company *without regard to the time when the Southern Pacific Company filed its map of definite location*, for the reason that these lands had been reserved by Congressional authority.

In Bardon vs. Northern Pacific Railroad (154 U. S., 288), the mineral lands were not identified in any way at the time the company filed its map of definite location. Yet it was held that when they were identified thereafter they could not be operated upon by the railroad grant because they were reserved to the United States by another act of Congress.

This contention of counsel for appellants is at war with this settled rule that lands set apart by Congress or by other competent authority cannot be *operated upon* by any subsequent law or proclamation, unless specifically declared to cover the premises.

The law set apart and identified these lands when the Atlantic and Pacific map of definite location was filed, as declared by this court again and again. (Buttz vs. Northern Pacific Railroad, 119 U. S., 55; St. Paul Railroad vs. Northern Railroad, 139 U. S., 1.)

The Secretary of the Interior also set apart, reserved,

and withdrew these lands as shown by maps of definite withdrawal, which it was his duty to do whether the act expressly directed it or not. (Hamblin vs. Western Land Company, 147 U. S., 531; United States vs. Des Moines Company, 142 U. S., 510.) The lands within the 30-mile limits were reserved by executive orders for that company years before the Southern Pacific filed its maps of definite location under its junior grants.

This court has often said that it is a duty of the Secretary of the Interior to set apart and reserve sufficient land where a grant is made by Congress so that the grant may be satisfied. Spencer vs. McDougal, 159 U. S., 62.

The principle that lands set apart for a public purpose at the date of a railroad land grant cannot be taken for another purpose, declared in so many cases, has been emphasized in the recent decision in Sioux City Railroad vs. United States (159 U. S., 349), and in Chicago R. R. vs. United States (159 U. S., 372, at p. 375), in holding that the moity of lands in an overlap granted to the Sioux City Railroad could not be used as a base by the Chicago Railroad upon which *indemnity* selections could be made, and that the grant to one road could not operate at all upon any of the lands appurtenant to the grant to the other, for the reason that those lands had been set apart by Congress for another railroad, and thus neither company *could obtain any benefits from the forfeited grant of the other.*

In the Northern Pacific vs. Musser-Sauntry Co., 168 U. S., 604, at p. 611, the court said:

"When a withdrawal of lands within indemnity limits is made in aid of an *earlier* land grant, and made prior to the filing of the map of definite location by the company having the later grant, the latter having such words of exception and limitation as are found in the grant to the plaintiff, *it operates to except the withdrawn lands from the scope of such later grant.*"

It is therefore submitted that the contention that these lands can be selected as indemnity by the Southern Pacific Company is not supported by principle or by authority.

Southern Pacific Grant Forbade the Selection of These Lands as Indemnity.

(4) Aside from the question of intention and the principle of reservation, it is expressly provided by the Southern Pacific grant that these lands cannot be taken as indemnity.

The provision in section 3 of the act of July 27, 1866, referred to in the act of 1871, and joint resolution of 1870 governing indemnity selections, provides as follows:

"and whenever prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preëmpted, or otherwise disposed of, *other lands* shall be selected by said company in lieu thereof, under the direction of the Secretary of the interior, *in alternate sections* and designated by *odd numbers*, not more than 10 miles beyonds the limits of said alternate sections and not including the *reserved numbers.*"

It will be observed that the selections are to be made from "*odd numbers*" and from lands which do not include the "*reserved numbers.*"

If the selections could be made from the alternate *even sections* the act would not have required that they should be made only from the *odd numbers*. It is therefore evident that the "*reserved numbers*" referred to are those which have been previously granted, sold, reserved, or otherwise disposed of by the United States, and in that case lands granted to or reserved for the Atlantic and Pacific Railroad could not be selected as indemnity.

We are not lacking authority upon this particular question. In United States vs. Missouri Railroad (141 U. S., 374) it was expressly held that the provisions of that act, excluding from the operations of the grant lands reserved by Congress in any manner, by any competent authority, could under no circumstances be selected as indemnity by another railroad, although the United States held full title to such lands at all the times referred to in that case.

In adjudged cases in the Interior Department it has been held that lands within the forfeited Atlantic and Pacific grant cannot be selected as indemnity by the Southern Pacific Company. (Southern Pacific Railroad Co., 6 Land Decisions, 816; Moore vs. Kellogg, 17 id., 391–392; Southern Pacific Railroad Company vs. Moore, 11 id., 534; Southern Pacific Railroad Company, 15 id., 460.)

In Southern Pacific vs. United States, 168 U. S., 1, a part of the lands being within the *indemnity limits* of the Southern Pacific, and in Atlantic and Pacific primary and indemnity limits, and it being contended by

the Southern Pacific that subsequent to the forfeiture of 1886 it had a right to select those lands as indemnity, the court said (page 62):

"as all the lands here in controversy are embraced by the maps of 1872 (Atlantic and Pacific maps), and therefore appertain to the line located by such maps, it must be for the reason stated in the former decision (146 U. S., 570), that the United States is entitled, as between it and the Southern Pacific Railroad, to the relief given by the decree below."

The relief given by the decree below was to perpetually enjoin the Southern Pacific from claiming any of those lands.

(5) There would be nothing gained in the prosecution of this suit by the Government, or of any other suit of a similar character, if the contention of the Southern Pacific is sound, viz., that if it cannot take these Atlantic & Pacific lands as a part of its primary grant, it may select them as indemnity. For what would be the object in recovering from the Southern Pacific these lands, only to lay the foundation for the Southern Pacific to take an equal quantity of other lands in lieu of them, or to allow them to be taken under indemnity selections. The effect of such an operation would be that whenever the Government had recovered a section of land it would thereby assure to the Southern Pacific the right to take an equal quantity of as good or better land from other parts of the public domain, or take the same land as a lieu selection. Such an absurd result could not have been within the contemplation of Congress.

Sixth Point.

MILLS AND KING, TRUSTEES IN THE MORTGAGE EXECUTED BY THE SOUTHERN PACIFIC IN 1875, AND THE CENTRAL TRUST COMPANY, TRUSTEE IN THE MORTGAGE MADE BY THAT COMPANY IN 1888, ARE NOT BONA FIDE PURCHASERS OF THESE LANDS AND HAVE NO LEGAL OR EQUITABLE TITLE TO THEM.

(1) In the first point of this brief it was shown that both of these mortgages contained provisions assented to by the trustees and the bondholders, to the effect that the Southern Pacific Railroad Company should have the *sole and exclusive management and control of these lands, and should be empowered to sell them*, and it was shown we think that the prior adjudications against the Southern Pacific, operated against the trustees for the bondholders who were represented in those cases and who were in privity with the Southern Pacific Company.

(2) The trustees in the mortgage executed by the Southern Pacific in 1875, then Mills and Lansing, now Mills and King, were parties to the suits decided in 146 U. S., 615, 619 [rec. 778], and being *parties* that is not only a conclusive adjudication against them that they acquired no interest in these lands by virtue of the mortgage of 1875, but we find there a decision which establishes *as matter of law* that such a mortgage as that executed in 1875 cannot convey any interest to trustees or bondholders which could avail them

in the former suit or which can avail them in this suit.

The mortgages of 1875 and 1888 are essentially identical in terms.

When the former cases were decided, the act of March 3, 1887, protecting the rights of bona fide purchasers of patented lands was in full force and operation, as it was also in operation when the cases were commenced; and the answer in the former cases distinctly put in issue the rights of the trustees and bondholders under that mortgage.

The court having entered a decree against the Southern Pacific Railroad Company, and against Mills and Lansing, trustees (146 U. S., 570, 614), and having adjudged that the mortgage of 1875 was inoperative to prevent the government from taking a decree, it follows, as a matter of law, aside from the effect of *res adjudicata* that the mortgage was wholly inoperative as to these lands.

That the act of Congress of March 2, 1896, gave no right to the trustees was determined in the case in 168 U. S., 1–66, when the judgment against the trustees was affirmed.

(3) The contention of counsel for defendants that the mortgages of 1875 and 1888 are deeds and not mortgages does not find any support, as appears from an inspection of the instruments themselves.

If the legal title was conveyed by the instrument of 1875 to Mills and Lansing, of course the legal title could not have been conveyed to the Central Trust Company by the instrument of 1888.

That these instruments are both mortgages clearly appears from an inspection of them.

The mortgage of April 1, 1875, between the Southern Pacific Railroad Company, party of the first part, and Mills and Tevis (King now substituted for Tevis), parties of the second part, first recites the acts of Congress, approved July 27, 1866, and March 3, 1871, and then recites that certain bonds have been authorized to be issued, and then provides as follows:

"Whereas, the said Board of Directors at the meeting aforesaid and in the manner and form and by the vote aforesaid, did further direct that to secure the payment of said bonds a *first mortgage* upon said road and its rolling stock, stations, fixtures, right of way and franchises, *and the lands aforesaid, granted by said acts of Congress* (July 27, 1866, and March 3, 1871) * * should be executed under the corporate seal of said company * * *." [record 1096.]

"Now, therefore, this indenture witnesseth: That the said Southern Pacific Railroad Company, for the better securing of the payment of the principal and interest *of the said first mortgage bonds*, * * * by these presents doth grant, bargain, sell, alien, convey and confirm unto the said parties of the second part and to their successors, duly appointed, for the execution of the trusts herein set forth, the following property * * * [rec. 1697], *all and singular the said several sections of land so as aforesaid granted by said acts of Congress* * * *." [rec 1704, 1705]

The instrument then provides as follows:

"That all the lands hereinabove conveyed and mortgaged shall be under the sole and exclusive management and control *of the said party of the first part*, who shall have full power and authority to make contracts for the sale of the same, at such price, on such credit or terms of payment, and such other conditions as shall be agreed on by the said parties of the first and second

parts, and as shall seem to them best calculated to secure the payment in full of all the bonds issued as hereinbefore provided, until entry or foreclosure by the trustees * * * ." [rec. 1706.]

The instrument of August 25, 1888, to the Central Trust Company [rec. 1745], is similar in its terms to the instrument of 1875, but provides as follows: [rec. 1751.]

"All lands granted or conveyed under the acts of Congress hereinbefore referred to and in anywise affected by the provisions hereof, shall be subject to the express provision that if and so long as the bonds issued under and secured by the said indenture of mortgage to D. O. Mills and Lloyd Tevis, dated April 1, 1875, or any thereof shall remain outstanding, any and all sales made in the manner in said last-mentioned indenture of mortgage prescribed, shall absolutely and forever release the said lands from any and all lien or encumbrance of under or in respect of this mortgage or the bonds issued thereunder; and if and when all the bonds issued under said indenture of mortgage of April 1, 1875, shall have been fully satisfied and discharged, and the lien of such last-mentioned indenture of mortgage upon such lands fully released, then the said lands, so far as they remain unsold at that time, shall be subject to the like provisions in respect to sale, and conveyance and release from the lien of this mortgage as are in said mortgage of April 1, 1875, prescribed in respect to sale and conveyance and release from the lien thereof."

Each of these mortgages was given *to secure a debt.*

It will be observed that the parties, themselves, to both of these instruments declare their intention as to what the instruments are by referring to them both as "mortgages"; and it will be observed that it is declared in both instruments that the bonds constitute a *lien* upon the lands; and it will be observed further that in

both instruments the full and absolute control and disposition of the lands remains in the Southern Pacific Railroad Company until a suit for foreclosure shall have been commenced.

It will be further observed that the lien of the bonds is to be satisfied by a foreclosure.

In Jones on Mortgages (4th ed.), section 62, it is said:

"A deed of trust to secure a debt is in legal effect a mortgage. It is a conveyance made to a person other than the creditor, conditioned to be void if the debt be paid at a certain time, but if not paid that the grantee may sell the land and apply the proceeds to the extinguishment of the debt, paying over the surplus to the grantor. The addition of the power of sale does not change the character of the instrument any more than it does when contained in a mortgage. Such a deed has all the essential elements of a mortgage; it is a conveyance of land as security for a debt."

In Perry on Trusts, Vol. 2, sec. 602, *d* it is said:

"Mortgages containing powers of sale and deeds of trust to secure a debt due to a creditor, are substantially the same thing in law and equity. At law, both kinds of deeds purport to convey the legal title to the grantee or creditor, or trustee; but in equity the land, the title and the deeds stand for security of the debt. The debt is the principal thing, and the conveyance of the land is collateral to the debt. The mortgagor in both cases has an estate in the land called an equity of redemption; if he fails to pay the debt, his equity of redemption is barred upon due proceedings had; but if the debt is paid at any time before his equity is defeated by the steps appointed to be taken, it becomes absolute, and he is entitled to a re-conveyance or a discharge of the mortgage, as the case may be. In some circumstances a discharge of the mortgage upon payment or a re-conveyance is not material, as by the

terms of the mortgage and by the law it becomes null and void. A mortgage is a pledge or security for a debt, whatever may the form which the transaction takes, whether a simple mortgage deed in form, or a mortgage with a power of sale, or a deed in trust, or a deed absolute on its face, accompanied by an agreement in writing to re convey, or to sell, or to do any other thing upon the payment of a certain sum of money; courts of equity look upon it as a mortgage, and deal with it as such. The test in all these forms is this: Does the transaction resolve itself into a security for the payment of a sum of money or a debt, and until a default in the payment of a sum of money or a debt, has the grantor any right to pay the money and keep or receive back the title to his property? And it is immaterial that the conveyance is made to a third person, and not to the creditor himself."

The contention of counsel for the Southern Pacific is that the trustees in the mortgages of 1875 and 1888 are bona fide purchasers of these lands and protected in their rights by the provisions of the acts of Congress of March 3, 1887, and March 2, 1896, relating to the adjustment of railroad grants.

These acts are printed in the appendix and are greatly relied upon by counsel for the Southern Pacific.

It is provided in the act of March 3, 1887, as follows:

"*That a mortgage or pledge of said lands by the company shall not be considered as a sale for the purpose of this act.* * * * * * *."

These acts are in *pari materia* and should be construed together. They both relate to the adjustment of railroad grants, they both make provisiou for the protection of bona fide purchasers from the railroad of lands erroneously patented or certified, and they both define the rights of such purchasers.

The principle is well settled that statutes in *pari materia* are to be construed together, and effect must be given to all the parts.

United States vs. Tynen, 11 Wall., 88, 92.

Chicago Railroad vs. United States, 127 U. S., 406.

Chew Heong vs. United States, 112 U. S., 536.

District of Columbia vs. Hutton, 143 U. S., 18.

Frost vs. Wenie, 157 U. S., 461, 58.

United States vs. Healey, 160 U. S., 136, 146.

That Congress intended these acts to be construed together, and that the act of March 2, 1896, was an amendment of the act of 1887, appears from the last clause of section 2 of the act, which provides in effect that a bona fide purchaser of lands may establish his claim in the United States courts "or at his option as prescribed in sections 3 and 4 of chapter 376 of the acts of the Second Session of the 49th Congress," which chapter there designated is the act of March 3, 1887. Thus, in the act of March 2, 1896, Congress not only refers to the provisions of sections 3 and 4 of the act of March 3, 1887, but gives the provisions of those sections new life and vitality by continuing their operation; and one of the provisions of section 4 is that a mortgage or pledge shall not be deemed to be a sale.

This provision, therefore, has not been repealed and remains in full force, and as the instruments of 1875 and 1888 to the trustees to secure bonds were each in the nature of a mortgage or pledge of the lands, they cannot be construed as a sale or conveyance within the meaning of the acts of Congress referred to.

Congress was dealing with mortgages or trust deeds made by railroads to secure bonds. It had been the universal custom of railroads to issue bonds secured by mortgages or deeds of trust and covering the land grants, and Congress, knowing this, provided that nothing in the nature of a pledge or mortgage should be considered a sale.

As the instruments in question here were executed for the sole purpose of *securing a debt*, they must, under the authorities above cited, and in view of the intention of Congress, be considered as a pledge or mortgage of the lands.

All of the patents issued to the Southern Pacific were void absolutely for want of power and authority to execute them. They could be attacked in suits at law or in equity directly or indirectly, and third parties were fully chargeable with notice from the public laws and records, that the lands were reserved, and that the patents were void.

Doolan vs. Carr, 125 U. S., 618.
Newhall vs. Sanger, 92 U. S., 761.
Morton vs. Nebraska, 21 Wall., 660.

And the mortgagees or purchasers were bound to take notice of the *power* of the officials of the Land Department to issue these patents.

Sioux City Railroad vs. United States, 159 U. S., 349, at p. 371.

Neither mortgagees nor purchasers, therefore, could ever have been considered bona fide purchasers, without notice, in the absence of the legislation of March

3, 1887, and March 2, 1896; and that legislation expressly provided that mortgages and pledges shall not be construed to be sales.

(4) The deeds of trust to the Central Trust Company and to Mills and Lansing (now King) *do not cover the lands granted to or reserved for the Atlantic & Pacific Railroad Company*, being lands in suit herein.

Those instruments do not describe any particular tracts of land, as has been shown by the quotations of parts of those instruments, but in general terms purport to cover "the lands granted to said railroad company by the acts of Congress of March 3, 1871, and July 27, 1866."

Turning now to Section 3 of the act of Congress of July 27, 1866, *which describes the lands covered by that grant and by the grant of 1871*, we find that the following is the description:

"That there be and hereby is granted * * * * * * * every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States; and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, *and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated*, and free from pre-emption or other claims or rights *at the time the line of said route is designated* by a plat thereof, filed in the office of the Commissioner of the General Land Office." * * * * *

The lands in suit having been granted to and reserved for the Atlantic and Pacific Railroad Company, were not and could not have been included in the grant

to the Southern Pacific Railroad Company, and they were not and could not have been covered by the mortgages in question, as those mortgages were expressly limited to lands *granted* to the Southern Pacific.

These lands which were reserved or otherwise disposed of prior to the Southern Pacific filing its map, were not included *in the description of the land conveyed.*

United States vs. Southern Pacific, 146 U. S., 570, 619.

Southern Pacific vs. United States, 168 U. S., 1.

This proposition seems so plain that further argument is deemed unnecessary.

Seventh Point.

THE GOVERNMENT IS ENTITLED TO A DECREE AGAINST THE PRESENT DEFENDANTS FOR THE THIRTY THOUSAND ACRES OF LANDS AS TO WHICH THE BILL WAS DISMISSED BY THE CIRCUIT COURT, WHICH LANDS WERE CONTRACTED TO BE SOLD BY THE RAILROAD AND UPON WHICH PARTIAL PAYMENT ONLY HAS BEEN MADE.

(1) In subdivisions four and five of the first point of this brief, it was shown to the court that *subsequent* to the commencement of the suit against the Southern Pacific Railroad Company, decided in 146 U. S., 615, 619, that company had contracted to sell a large quantity of land, sued for in the present case, to divers persons, and prior to the commencement of the *present*

suit, the railroad had received only a partial payment upon their purchase price.

And that as to all the 30,000 acres to which the court below determined the title against the Government, only a part and a small part of the purchase price had been paid at either the date of commencement of this case or the former case. (See appendix.)

It was contended by the Government that by reason of the former adjudications the Southern Pacific Company, and those in privity with it, were estopped in the present case from claiming that any right or title to these lands had been acquired, inasmuch as the estoppel operates as fully against privies as against parties, and the purchasers were undoubtedly in privity with the Southern Pacific Railroad Company, except as to payments made prior to the commencement of the former suit.

(2) It was also shown we think in the former part of the brief, that inasmuch as the land had been contracted to be sold by *executory contracts*, and that a partial payment only had been made, that the Southern Pacific Railroad Company had, at the time of the commencement of this suit, an interest in those lands, and that by reason of the prior adjudications the Government is now entitled to have its title quieted to them.

(3) The United States has taken a cross-appeal from that part of the decree dismissing the bill as to these lands, and now, upon the merits of the case, in addition to the effect of the prior adjudications, it is insisted that the Government is entitled to a decree against the present defendants for these lands.

That the railroad company has parted with some equitable title or right to these lands cannot deprive the Government of the right to a decree for the *remaining title and interest* held by the railroad company.

In Lytle vs. Lansing, 147 U. S., 59, at page 70, the court said that it was "*a settled rule in equity that a purchaser without notice to be entitled to protection must not only be so at the time of the contract or conveyance, but at the time of payment of the purchase price*," and cited numerous authorities in support of that settled principle.

At the time these contracts of purchase were made, the lands had not been patented, nor where they patented when this suit was commenced (see appendix); the legal title to these lands was in the United States. The most favorable aspect of the case for the railroad company is that by making these executory contracts and receiving a payment upon the purchase price, the purchaser, by reason of the adjustment act of 1887, became possessed of an *equitable interest* to the extent of the payment made, and that the legal title remained in the Government, to be held subject to the payment of the balance of the purchase price.

The principle is well settled that where property is sold by executory contract upon partial payment, the legal title remains in the vendor, to be held until the balance of the purchase price is paid, and that the purchaser has an equitable title only to the extent of the payment made.

Williams vs. United States, 138 U. S , 514, 516.

Jennisons vs. Leonard, 21 Wall., 302, 309.

1 Story's Eq. Jur., 396.

It is not perceived why the Circuit Court refused to subrogate the Government to the interest in these lands claimed by the Southern Pacific Company.

The effect of the decree below is to give all these lands to the Railroad Company.

Granting to the purchasers all the rights and inests claimed on their behalf by counsel by virtue of the adjustment acts of March 3, 1887, of February 12, 1896, and March 2, 1895 (see appendix), and it is not perceived why the Government is not entitled to a decree for the interest claimed by the company. The act of Congress of Feb. 12, 1896, expressly provides that in cases where sales have been made by the company of patented lands (excepted from the grant) upon partial payment, and where less has been paid than the Government price, that the purchaser can secure a patent from the United States only *by paying to the United States* the difference between what he paid the company and the Government price. This act of March 12, 1896, amending the act of March 3, 1887, clearly shows the intention of Congress.

Congress did not intend to give these lands to the purchaser without their being paid for, and did not intend to give them to the company unless there had been a completed sale, and even in that case required the company to pay over to the Government the Government price for the lands.

The Circuit Court has not given the land to either

the purchaser or to the Government, but in effect to the railroad.

Undoubtedly the act of Congress of March 2, 1896, was in the nature of a *new grant* to the purchaser upon the theory that his interests had been prejudiced by the erroneous rulings of the officers of the Interior Department. (Winona cases, 165 U. S., 463, 483.)

That act did not confirm the title of the railroad company nor did it enlarge or affect the title of the company in any respect, and it was for the *benefit of the purchaser* that the act was passed.

In Litchfield vs. Webster County, 101 U. S., 773, 775, the court construed the joint resolution of Congress of March 2, 1861, which is almost identical with the act of March 2, 1896, and originated under similar circumstances.

It had been adjudged by the court in Wolcott vs. Des Moines Co., 5 Wall., 681, and other cases, that the lands between the Racoon Fork of the Des Moines river and the north boundary of the State of Iowa, were not embraced in the grant made by Congress for the improvement of the Des Moines river, although they had been reserved by executive orders for that purpose and patents had been erroneously issued to the State and the lands had been sold to bona fide purchasers, and the court held that the joint resolution of March 2, 1861, which confirmed the title of bona fide purchasers, was *a new grant to the purchaser*, and the court said (101 U. S., 774, 775):

"The grant made by that resolution was just as much

an original grant as if the act of 1846 (for the Des Moines improvement) had never been passed. The order of the executive department reserving them from sale neither transferred any title to nor created any interest in the State. It simply retained the ownership in the United States. While the subsequent gift was undoubtedly induced by what had happened before, the United States, until it was made, continued to be the proprietor of the lands, both in law and in equity. Such being the case they were not taxable before March 2, 1861. They, down to that time, actually belonged to the United States, and no one else had any interest whatever in them. * * * *The title thus relinquished enured at once to the benefit of the purchasers, for whose use the relinquishment was made.*"

It will hardly be contended here that the act of 1887, or either of the acts of 1896, were intended to or did operate to confirm any title to the *railroad* or enlarge the interest of that company in any way in them. The acts were passed for the benefit only of the bona fide purchasers, and that being so how could it be, that either of those acts could pass to or confirm in such purchasers any *greater interest* than they had acquired under their executory contracts? It is submitted that the decree of the Circuit Court dismissing the bill as to these lands is erroneous.

THE WRONGFUL PROCUREMENT OF PATENTS THROUGH THE INTERIOR DEPARTMENT BY THE SOUTHERN PACIFIC, *PENDENTE LITE*, CANNOT AID THE DEFENDANTS IN THIS SUIT, AS THE CIRCUIT COURT THEN HAD JURISDICTION OF THE PARTIES AND OF THE SUBJECT-MATTER.

As before shown, the 30,000 acres as to which the court

dismissed the bill, and being the same lands above mentioned, were patented *pendente lite.*

The present bill was filed May 14, 1894 (record 330). On July 23, 1894, defendants were served with subpœna (record 41).

The defendants appeared and filed pleas in abatement on September 1, 1894 (record 42, 45, 48), which pleas were overruled.

In some unexplained manner, and while this cause was pending for trial, and when the Circuit Court had complete jurisdiction of the parties and of the cause, the Southern Pacific Railroad Company, on November 28, 1894, December 22, 1894, and July 27, 1895, respectively, procured three patents from the Interior Department embracing thirty thousand acres of the identical land sued for by the present bill, and situated within the Atlantic and Pacific grant (record 2563, 2575, 2585).

Prior to the commencement of this suit, and while the land remained unpatented, the Southern Pacific had contracted to sell the most but not all of these thirty thousand acres to divers persons, upon which a part only of the agreed purchase price had been paid (see appendix hereto).

The Circuit Court, by its final decree, in effect dismissed the bill as to all of these thirty thousand acres, upon the ground that these persons holding under contracts were bona fide purchasers of the land, and that the title to this land had been confirmed by the provisions of the act of Congress of March 2, 1896 (record 353, 362).

The effect of this decree was to finally determine that the Southern Pacific Railroad Company was the owner, by absolute title in fee, of these lands, and that the United States had no title or estate, legal or equitable, in them.

The effect of the decree is to so establish the title in the Southern Pacific Company that it can maintain and enforce actions against the purchasers of these lands for the remainder of the purchase price, and deprives the Government of any interest in the land, notwithstanding that only a small part of the purchase price had been paid to the railroad company, which company held the legal title, and an equitable interest, in the property, subject to the payment of the balance of the purchase price.

For the purposes of argument and treating the land as patented land sold to bona fide purchasers, it is obvious that the effect of the decree is to nullify the provisions of the acts of Congress of March 3, 1887, and February 12, 1896, which explicitly require the bona fide purchaser *to pay to the United States* the difference between what has been paid and the ordinary Government price, before patent can be secured from the United States.

But none of the purchasers of these thirty thousand acres were bona fide purchasers or purchasers at all of any *patented lands*, because, as before stated, at the time contracts were made the lands were unpatented, and the act of Congress of March 2, 1896 (see appendix) only purported to confirm and protect the title of *patented lands* held by bona fide purchasers.

When those contracts were made the purchasers, of course, were fully informed, from the state of the records and from the contracts themselves, that the lands were unpatented, and the purchasers expressly agreed in those contracts (record 2052, 2551, 2552) that the Southern Pacific Railroad Company "will use ordinary diligence to procure titles for them"; and it is further provided (record 2553) "that the party of the second part (the purchaser) * * * will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part * * * ."

It is obviously contemplated by these contracts that in all matters and proceedings relating to the procurement of title to these lands by the railroad company that it should at all times fully represent and act for the purchasers, so that not only did the railroad company hold the legal title at the time the decree herein was entered, but it held an equitable interest in the lands to the extent of the unpaid purchase price upon its own account, and it acted for the purchasers in the procurement of patent.

It is, therefore, submitted, that upon well settled principles, the wrongful issuance of these patents to the Southern Pacific Company, pendente lite, should not aid the railroad company or the purchasers in holding this land as patented land sold to bona fide purchasers, as defined in the acts of 1887 and 1896.

There can be no doubt as to the jurisdiction of the Circuit Court over the parties and of the subject-matter, and it would seem that that court was empowered to go on and determine the respective rights of the United

States and of the defendants in these lands, without being obstructed or impeded by the acts of the Interior Department, although it may be a tribunal in some respects having a concurrent jurisdiction.

In Farmers Loan and Trust Company vs. Lake Street Railway, 177 U. S., 51, 61, the court said:

"The possession of the res vests the court, which has first acquired jurisdiction, with the power to hear and determine all controversies relating thereto, and, for the time being, disables other courts of co-ordinate jurisdiction from exercising a like power This rule is essential to the orderly administration of justice and to prevent unseemly conflicts between courts whose jurisdiction embraces the same subjects and persons."

See also

Moran vs. Sturges, 154 U. S., 256, 273, 275.

Harkrader vs. Wadley, 172 U. S., 148.

Central Bank vs. Stevens, 169 U. S., 432.

In Richmond Mining Company vs. Rose, 114 U. S., 576, 586, in an action brought under section 2325, Revised Statutes, to determine conflicting rights to a mining claim, and while the action was pending in the Circuit Court, one of the parties procured from the Inerior Department a patent to *another mining claim*, by virtue of which it was claimed the holder thereof was entitled to follow a vein upon its dip into the mining claims, the subject of suit, and the court said:

"the right to that part of this very vein being in contest between these parties in reference to the Uncle Sam and St. George claims, the decision of this controversy cannot be rendered nugatory by the introduction of a new claim by one of the parties, whose claim of right from the Government for this same loca-

tion is initiated while this litigation is going on. The parties were all in court. The subject-matter was before the court. The thing to be decided was the right of the conflicting claims to this lode. This was within the jurisdiction of the court, and any patent issued to one, or the other, or both these parties, under this proceeding for this property, must relate back to the date of their claims, and override the new patent. This result cannot be defeated by producing this new patent to destroy it. The claim was initiated by a party to this suit *pendente lite*, and must abide the result of the litigation in this case."

There has been no transaction as between the railroad company and these purchasers between the filing of this bill and the passage of the act of Congress of March 2, 1896, to be operated upon or affected by that act, and if these patents had not been procured pendente lite the Government would have been entitled to a decree establishing its title to these lands, subject only to the payment to the Government of the Government price of the lands, as provided in section 5 of the act of Congress of March 3, 1887 (see appendix).

It is submitted that the orderly administration of justice and the protection of litigating parties, as well as of the public, requires in this case the enforcement of the salutary rule above mentioned, that the rights of the parties to this suit must be determined without reference to the issuance of these patents pendente lite, and as if they had never been issued.

The enforcement of this rule will require a reversal of the decree of the Circuit Court upon the cross-appeal of the Government, and a decree in favor of the United States.

Eighth Point.

In the decree of the Circuit Court it was adjudged as follows:

"And it is further ordered, adjudged and decreed that this decree shall not affect any right which the United States may have to recover from the defendant Southern Pacific Railroad Company the proper Government price for any of the aforesaid lands sold by the said company to third persons, *nor shall it cancel or vacate any patent issued by the United States to the said Southern Pacific Railroad Company for lands sold by it to a bona fide purchaser.*" (rec. 362.)

The court erred in adjudging that the decree should not cancel or vacate any patent issued to the railroad company for lands sold to a bona fide purchaser.

The very purpose of this suit was to determine the rights of the United States to these lands as against the defendants before the court.

Even if any other person not a party defendant upon the record had or claimed to have any interest in these lands, that could not prevent the United States from obtaining a decree against the defendants here for their unfounded claims.

The option was with the United States to join or not to join persons having or claiming an interest in the lands.

Williams vs. United States, 138 U. S., 514, 516, 517.

But in the present case, it does not appear from the evidence that any of the lands have been patented to the railroad and sold to bona fide purchasers, other than the 30,000 acres sold by executory contracts upon par-

tial payments, and as to which the court, as the Government contends, erroneously dismissed the bill.

No other lands were patented to the company and sold to bona fide purchasers and the Government was entitled to a decree against the present defendants annulling all patents issued to the company and quieting its title as against the defendants.

In this case the court has fallen into the same error which was condemned in Southern Pacific Railroad vs. United States, 168 U. S, 1, 66.

In that case the court said at page 65:

"The decree which was passed declares that it is not to 'affect any right which the defendants, or any of them, other than the Southern Pacific Railroad Company, now have or may hereafter acquire in, to or respecting any of the lands hereinbefore described, in virtue of the act of Congress entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," approved March 3, 1887.' *Instead of leaving undetermined the matters in dispute between the United States and the defendants other than the Southern Pacific Railroad Company, the Circuit Court should have determined, by its final decree, what rights those defendants have by virtue of the above act of March 3, 1887, 24 Stat., 556, c. 376, in the lands or any of them now in dispute and claimed by the United States. The effect of the decree is to leave undetermined the question whether the defendants who claim under the Southern Pacific Railroad Company are protected by that or any other act of Congress. The Government was entitled to a decree quieting its title to all the lands described in its pleadings except those, if any, that are protected, in the hands of claimants, by acts of Congress. United States vs. Winona & St. Peter Railroad, 165, U. S., 463; Winona & St. Peter Railroad vs. United States, 165, U. S.,*

483. But as the Government has not repealed, the decree cannot be reversed for the error of the Circuit Court in not finally disposing of the issues between the United States and the individual defendants who claim under the Southern Pacific Railroad."

The effect of the decree in the present case is to leave undetermined what rights the United States have to any of the lands for which the suit was brought, inasmuch as it cannot be ascertained from the decree what lands have been patented to the railroad nor what lands the railroad has sold to bona fide purchasers, and the title of the United States to all of the lands remains obscured and clouded by this provision.

In conclusion, it is submitted that the decree of the court below should be affirmed upon the appeal of the Southern Pacific Railroad Company and the trustees of the mortgage bonds, and should be reversed upon the appeal of the United States, with directions to enter a decree in favor of the Government for the relief sought.

JOSEPH H. CALL,
Special United States Attorney.

Appendix (1).

ACTS OF CONGRESS, AND LAWS OF CALIFORNIA.

ATLANTIC AND PACIFIC GRANT.

July 27, 1866 (14 Stat., 292).

AN ACT Granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast.

Section 1 incorporated the Atlantic and Pacific Railroad Company and provided for the construction and location of a line of railroad, as follows:

"Beginning at or near the town of Springfield, in the state of Missouri, thence to the western boundary line of said state, and thence by the most eligible railroad route, as shall be determined by said company, to a point on the Canadian river; thence to the town of Albuquerque, on the river Del Norte, and thence by way of Aqua Frio, or other suitable pass, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude as neear as may be found most suitable for a railway route to the Colorado river, at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific."

Section 2 grants a right of way, etc.

"SEC. 3. *And be it further enacted*, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway, and its branches, every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state;

and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preëmption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office, and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preëmpted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to said 'Atlantic and Pacific Railroad Company,' or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby excluded from the operations of this act; and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided further*, That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said 'Atlantic and Pacific Railroad.'"

"SEC. 4. *And be it further enacted*, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said

railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid."

"SEC. 6. *And be it further enacted*, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed except by said company as provided in this act; but the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled, 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be, and the same are, hereby extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company."

"SEC. 8. *And be it further enacted*, That each and every grant, right, and privilege herein are so made and given to and accepted by said Atlantic and Pacific Rail-

road Company upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, Anno Domini, eighteen hundred seventy-eight."

"SEC. 9. *And be it further enacted*, That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road."

"SEC. 11. *And be it further enacted*, That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation."

"SEC. 12. *And be it further enacted*, That the acceptance of the terms, conditions, and impositions of this act by the said Atlantic and Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed, pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards, and shall be deposited in the office of the Secretary of the Interior."

"SEC. 18. *And be it further enacted*, That the Southern Pacific Railroad, a company incorporated under the laws of the state of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the state of California, as they shall deem

most suitable for a railroad line to San Francisco; and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided; and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for.

"SEC. 20. *And be it further enacted*, That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military, and other purposes Congress may, at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend, or repeal this act."

CALIFORNIA ACT OF APRIL 4, 1870, AUTHORIZING SOUTHERN PACIFIC COMPANY TO CHANGE LINE OF ROUTE AND TO ACCEPT CONGRESSIONAL GRANTS.

"Whereas, by the provisions of a certain act of Congress of the United States of America, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the state of California,' approved July 27, 1866, certain grants were made to, and certain rights, privileges, powers and authority were vested in and conferred upon the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the state of California, therefore, to enable the said company to more fully and completely comply with and perform the requirements, provisions and conditions of the said act of Congress, and all other acts of Congress now in force, or which may hereafter be enacted, the state of California hereby consents to said act; and the said company, its successors and as-

signs *are hereby authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the state of California by such route as the company shall determine to be the most practicable*, and to file new and amendatory articles of association, and the right, power and privileges hereby granted to, conferred upon, and vested in them, to construct, maintain, and operate, by steam or other power, the said railroad and telegraph line mentioned in said act of Congress, *hereby confirming to and vesting in the said company, its successors and assigns, all the rights, privileges, and franchises, power and authority conferred upon, granted to, or vested in said company by the said acts of Congress and any act of Congress which may be hereafter enacted.*"

JOINT RESOLUTION OF JUNE 28, 1870.

(16 Stat. L., 382.)

"*Be it resolved by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the Southern Pacific Rail oad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven, and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said

act of July twenty-seventh, eighteen hundred and sixty-six, *expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act.*"

TEXAS PACIFIC AND SOUTHERN PACIFIC ACT.

March 3, 1871 (6 Stat. L., 573, 579).

"AN ACT To incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes."

Sections 1 to 22 of this act incorporated and made a grant of lands to the Texas Pacific Railroad Company.

Section 23 provides as follows:

"That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July twenty-seven, eighteen hundred and sixty-six: *Provided, however*, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

ACT OF FORFEITURE.

Act of July 6, 1886 (24 Stat. L., 123).

AN ACT To forfeit the lands granted to the Atlantic and Pacific Railroad Company, etc.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the lands, excepting the right of way, and the right, power and authority given to said corporation to take from the public land adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots,

machine shops, switches, side tracks, turntables, and water stations, heretofore granted to the Atlantic and Pacific Railroad Company by an act of Congress entitled 'An act granting lands to aid in the construction of railroad and telegraph lines from the states of Missouri and Arkansas to the Pacific Coast,' approved July twenty-seventh, eighteen hundred and sixty-six, and subsequent acts and joint resolutions of Congress which are adjacent to and coterminous with the uncompleted portions of the main line of said road, embraced within both the granted and the indemnity limits, as contemplated to be constructed under and by the provisions of said act of July twenty-seventh, eighteen hundred and sixty-six, and acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph line be, and the same are hereby, declared forfeited and restored to the public domain."

ACT OF CONGRESS OF MARCH 3, 1887.

Chapter 376 of second session 49th Congress.

(24 Stats., 556.)

AN ACT To provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled*, That the Secretary of the Interior be, and is hereby, authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads and heretofore unadjusted.

"SEC. 2. That if it shall appear, upon the completion of such adjustments respectfully, or sooner, that lands have been, from any cause, heretofore erroneously certified or patented by the United States, to or for the use or benefit of any company claiming by, through or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or re-conveyance to the United

States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so re-convey such lands to the United States within ninety days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney-General to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States.

"SEC. 3. That if, in the adjustment of said grants, it shall appear that the homestead or pre-emption entry of any bona fide settler has been erroneously canceled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: *Provided*, That he has not located another claim or made an entry in lieu of the one so erroneously canceled: *And provided also*, That he did not voluntarily abandon said original entry: *And provided further*, That if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to bona fide settlers residing thereon.

"SEC. 4. That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased upon making proof of the fact of such purchase at the proper land office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants, respectively, shall have been adjusted; and

patents of the United States shall issue therefor, and shall relate back to the date of the original certification or patenting. And the Secretary of the Interior, on behalf of the United States, shall demand payment from the company which has so disposed of such lands of an amount equal to the Government price of similar lands. And in case of neglect or refusal of such company to make payments as hereafter specified, within ninety days after the demand shall have been made, the Attorney-General shall cause suit or suits to be brought against such company for the said amount: *Provided*, That nothing in this act shall prevent any purchaser of lands erroneously withdrawn, certified or patented as aforesaid from recovering the purchase money therefor from the grantee company, less the amount paid to the United States by such company as by this act required:

And provided, That a mortgage or pledge of said lands by the company shall not be considered as a sale for the purpose of this act, nor shall this act be construed as a declaration of forfeiture of any portion of any land grant for conditions broken, or as authorizing an entry for the same, or as a waiver of any rights that the United States may have on account of any breach of said conditions.

"SEC 5. That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therfor to the said bona fide purchaser, his heirs or assigns: *Provided*, That all lands shall be excepted from the provisions of this section what at the date of such sales were in the

bo[illegible]e occupation of adverse claimants under the pre-emption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said pre-emption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therfor. *Provided further*, That this section shall not apply to lands settled upon subsequent to the first day of December, eighteen hundred and eighty-two, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases.

"SEC. 7. That no more lands shall be certified or conveyed to any state, or to any corporation or individual, for the benefit of either of the companies herein mentioned, where it shall appear to the Secretary of the Interior that such transfers may create an excess over the quantity of lands to which such state, corporation, or individual would be rightfully entitled."

Approved March 3, 1887. (24 Stat., 556.)

ACT OF CONGRESS, FEBRUARY 12, 1896.

(29 Stat., 6.)

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section four of an act entitled 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes,' approved March third, eighteen hundred and eighty-seven, be, and the same is hereby, amended by adding thereto the following proviso: '*Provided further*, That where such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the Government price of similar lands, they shall be required, before the delivery of patent for their lands, to pay to the Government a sum equal to the difference between the portion of the pur-

chase price so paid and the Government price, and in such case the amount demanded from the company shall be the amount paid to it by such purchaser.'"

ACT OF CONGRESS OF MARCH 2, 1896.

(29 Stat., 42.)

"*Be it enacted, &c.*, That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress, and amendments thereto, is extended accordingly as to the patents herein referred to. But no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed: *Provided*, That no suit shall be brought or maintained, nor shall recovery be had for lands, or the value thereof, that were certified or patented in lieu of other lands covered by a grant which were lost or relinquished by the grantee in consequence of the failure of the Government or its officers to withdraw the same from sale or entry.

"SEC. 2. That if any person claiming to be a bona fide purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a bona fide purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons, for whose benefit the certification was made, for the value of said land, which in no case shall be more than the minimum Government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the bona fides of such claimant shall not be conclusive of his rights, and if such claimant, or one

claiming to be a bona fide purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the court to be a bona fide purchaser, the court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons, for whose benefit the certification was made for the value of the land as hereinbefore provided. Any bona fide purchaser of lands patented or certified to a railroad company, and who is not made a party to such suit, and who has not submitted his claim to the Secretary of the Interior, may establish his right as such bona fide purchaser in any United States court having jurisdiction of the subject matter, or at his option as prescribed in sections three and four of chapter three hundred and seventy-six of the acts of the second session of the Forty-ninth Congress.

"SEC. 3. That if at any time prior to the institution of suit by the Attorney-General to cancel any patent or certification of lands erroneously patented or certified a claim or statement is presented to the Secretary of the Interior by or on behalf of any person or persons, corporation or corporations claiming that such person or persons, corporation or corporations, is a bona fide purchaser or are bona fide purchasers of any patented or certified land by deed or contract, or otherwise, from or through the original patentee or corporation to which patent or certification was issued, no suit or action shall be brought to cancel or annul the patent or certification for said land until such claim is investigated in said Department of the Interior; and if it shall appear that such person or corporation is a bona fide purchaser as aforesaid, or that such persons or corporations are such bona fide purchasers, then no such suit shall be instituted, and the title of such claimant or claimants shall stand confirmed; but the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons for whose benefit the patent was issued or certification was made for the value of the land, as hereinbefore specified.

Appendix (2).

Extracts from the Petition for Rehearing by Southern Pacific Company in Supreme Court (168 U. S., 1). Denied Dec. 20, 1897.

"Supreme Court of the United States.

OCTOBER TERM, 1897.

"No. 71.

"THE SOUTHERN PACIFIC RAILROAD COMPANY AND OTHERS, APPELLANTS,

"*vs.*

"THE UNITED STATES, APPELLEE.

"APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

"PETITION FOR RE-HEARING AS TO CERTAIN PORTIONS OF THE LANDS INVOLVED IN THE SUIT.

"To the Honorable the Justices of the Supreme Court of the United States:

"The appellants in the above entitled cause hereby humbly pray that the said case may be re-heard, and a re-argument therein ordered, *as to certain classes of land involved in the suit*, which are hereinafter specifically referred to, and that decrees be rendered in respect to such respective classes of lands as hereinafter prayed respectively." * * * * * * *

"The causes reported in 146 U. S. involved, however, only the claim of the Southern Pacific Railroad Company to lands which were situated within the *granted limits* of its *Branch Line Grant;* the causes reported at pages 570–614 involving lands in the *granted* limits of

the Southern Pacific Branch Line Grant which were found to be within the *granted limits of the Atlantic & Pacific Grant;* and the causes reported at pages 615–619 involving lands also within the *granted* limits of the Southern Pacific Branch Line Grant, but which were found within the *indemnity limits of the Atlantic & Pacific Grant.*"

"The lands involved in the causes reported at pages (146 U. S.) 570–614, being included within the *granted* limits of both grants, were held to belong to the United States on account of the priority of the date of the Atlantic and Pacific Grant of 1866 over the Southern Pacific Branch Line Grant of 1871, upon the principle that in respect to such a conflict priority of grant controlled. The lands involved in the causes reported (146 U. S.) at pages 615–619, being included within the *granted* limits of the Southern Pacific Grant and the indemnity limits of the Atlantic and Pacific Grant, were held to belong to the United States on account of the *proviso* quoted above, which provided that the Branch Line Grant should not 'affect or impair the rights present or *prospective* of the Atlantic and Pacific Railroad Company or any other railroad company.'"

"These former causes, upon the adjudication and authority of which the present case has been decided, did not however, involve lands in any of the three following categories:

"A. Lands within the *indemnity limits* of the Southern Pacific Branch Line Grant of 1871; the right to select and acquire which is dependent upon the *status* of the lands, not at the date of the grant or definite location (as in the case in respect of lands within *granted* limits), but at the date of *selection.*

"B. Lands claimed under the Southern Pacific Main Line Grant, viz., under Section 18 of the Atlantic and Pacific act of 1866.

"C. Lands sold by the Southern Pacific Railroad Company before institution of suit, and the rights of purchasers thereof (1) as bona fide purchasers under general principles of law; (2) under the act of March 3, 1887; (3) under the act of March 2, 1896."

"*In respect to lands involved within the three categories above referred to there was, and could be, no adjudication in any of the cases reported in 146 U. S., as none of those cases involved lands within those categories or either of them, nor do any principles established in either of those cases determine the questions involved in the determination of the rights of the company to these lands.*" * * * * * * * * * *

* * * * * * * * * * *

"The Grounds of this Application."

"*First.* The court has erroneously, but as is believed inadvertently, affirmed the decrees of the courts below affecting the right of the Southern Pacific Railroad Company, *subsequently to the passage of the Atlantic and Pacific forfeiture act of July 6, 1886*, to select under the act of March 3, 1871, as indemnity for losses occurring in its granted limits under said act, the lands involved in this cause which are within Southern Pacific *indemnity limits;* and accordingly it is respectfully submitted that the decree of the Circuit Court of Appeals, so far as it affirms the decree of the Circuit Court in respect to the lands involved in this suit within the *indemnity* limits of the Southern Pacific Railroad Company under the act of March 3, 1871, should be reversed by this court, and that the Circuit Court should be directed to dismiss the bill as respects those lands"

"*Second.* The final decrees, in this cause, should be so modified as to be expressed therein to be *without prejudice* to any right, title or interest of the Southern Pacific Railroad Company *under and by virtue of the Main Line Grant to that* company, contained in the act of July 27, 1866, in or to any of the lands described in the bill and in the decree of the Circuit Court." *

* * * * * * * * * *

"First."

"AS TO THE LANDS EMBRACED WITHIN THE *INDEMNITY LIMITS* OF THE SOUTHERN PACIFIC *BRANCH LINE GRANT*, AND THE

RIGHT OF THE SOUTHERN PACIFIC RAILROAD COMPANY TO MAKE INDEMNITY SELECTIONS THEREIN *AFTER* THE FORFEITURE OF THE ATLANTIC AND PACIFIC GRANT AND THE RESTORATION TO THE PUBLIC DOMAIN OF THE LANDS INCLUDED THEREIN."

I.

"*The decree of the Circuit Court of July 19, 1894, adjudged that the United States 'is the owner, by title in fee simple absolute of all the sections of lands' therein described*, which are the identical lands described in the bill, and that '*the defendants are, and each of them is, forever enjoined and restrained from* chopping upon or carrying from the said lands any trees, timber or wood, and from *claiming or asserting any right, title or interest in or to the said lands or any thereof.*' [record, vol. 1, pp. 356, 357.]"

"The Circuit Court of Appeals, on June 24, 1895, simply affirmed the decree of the Circuit Court (ib, vol. 5, p. 3214)."

"By the opinion of this court, filed on the 18th of October last, the decree of the court below is 'affirmed in all respects as to the *Southern Pacific Railroad Company*, as well as to the trustees in the mortgage executed by that company, and affirmed also as to the other defendants, subject, however, to the right of the Government to proceed in the Circuit Court to a final decree as to those defendants.'"

* * * * * * * * *

"The present cause was decided, and the decrees below were affirmed, as we understand from the opinion of the court, as upon the authority of the decisions in the former cases of *The United States vs. Southern Pacific Railroad Company* (146 U. S., 570), *and the United States vs. Colton Marble and Lime Company*, and *United States vs. Southern Pacific Railroad Company* (146 U. S, 615)."

"Those cases, however, involved only certain lands

within the *common granted or primary limits* of the Southern Pacific and the Atlantic & Pacific Companies, and certain lands within the *granted or primary limits of the Southern Pacific*, which fell within the former *indemnity* limits of the *Atlantic and Pacific*, and did not involve or relate to any lands within the *indemnity* limits of the *Southern Pacific;* and the decrees in those cases, therefore, did not and could not conclude or affect, as authority or precedent, any issues or questions of law touching the right of selection of the Southern Pacific Railroad Company under the act of 1871, after the passage of the Atlantic and Pacific Forfeiture Act of 1886, in respect to the lands within the *Southern Pacific indemnity limits*, and the Atlantic and Pacific granted limits, or within the common *indemnity* limits of both grants."

* * * * * * *

"In view, however of the broad terms of the decree of the Circuit Court, and the apparent legal effect of the decree, if affirmed, with regard to such of the lands here in suit as are within the indemnity limits of the Southern Pacific and the former Atlantic & Pacific granted or indemnity limits, and with regard to the existing and future selections thereof by the Southern Pacific Company under the act of 1871, it is necessary that the appellants should respectfully ask, as they do, that the learned court will order a re-hearing herein, and that the decree of the Circuit Court of Appeals, affirming the decree of the Circuit Court so far as it affects such Southern Pacific indemnity lands, be reversed, and that the Circuit Court be directed to dismiss the bill as respects those lands."

* * * * * * * * *

"It will appear upon an examination of this diagram (map 33) and the decree of the Circuit Court that, of the lands described in the bill of the United States and the decree of the Circuit Court, some 99,004.85 acres, as estimated, are within the *Southern Pacific indemnity limits* and the former Atlantic and Pacific granted and indemnity limits."

* * * * * * * *

"Second."

"AS TO THE CLAIM OF THE SOUTHERN PACIFIC RAILROAD COMPANY, AND THE MORTGAGE TRUSTEES, IN RESPECT TO LANDS EMBRACED WITHIN ITS *MAIN LINE GRANT* UNDER THE 18TH SECTION OF THE ATLANTIC AND PACIFIC ACT OF 1866."

* * * * * * * *

"*As a matter of fact considerable amounts of land embraced within the limits of the Main Line Grant are included within the land for the recovery of which by the United States this suit was brought.*" * * *

* * * * * * * *

"The bill in this cause refers to the Atlantic and Pacific Act of 1866, as prescribing the extent of the grant to the Atlantic and Pacific Railroad Company, through and by means of which the lands involved were claimed to have been withheld from the Southern Pacific grant, and also for the purpose of indicating the terms and conditions upon which the Southern Pacific Branch Line Grant (which for that purpose adopted the terms of the Atlantic and Pacific Grant) was made, but it did not make nor indicate any attack upon the Southern Pacific *Main Line* Grant. The answer interposed in this cause (for the reason stated above) made no claim under the Main Line Grant to any of the lands involved in this suit."

"In fact, the bill of the United States was so framed and to *tender issue only* upon the claim of the defendants under the act of 1871, as it expressly alleged in paragraph V, 'that said defendants claim said lands *under and by virtue of said* act of March 3, 1871,' etc. [record, vol. 1, p. 35], and paragraph V of the answer *admits* that the defendants claim ownership in themselves and grantees, etc., under the act of March 3, 1871 [record, vol. 1, p. 103]."

"The evidence in the cause was taken upon the same theory [vol. 1, p. 444]. As we have said, the fact that these lands were included within the Main Line

Grant, as well as within the Branch Line Grant, wholly escaped the attention of the pleader and of counsel for the defendants until the cause was being reached for argument in the Circuit Court of Appeals, when an examination by new counsel, then retained in the suit, of the maps in volume 6, paged as to 19 and 33, showed that the limit-lines of the Main Line Grant covered some of the lands in suit."

"It might undoubtedly be said that inasmuch as suit was brought for the recovery of these lands, it was incumbent upon the defendants to assert all the titles or claims which they had thereto, and that if, in addition to their claim to these lands under the Branch Line Grant (which this court has held to have been adjudicated against them by the decision of the former causes), they had a valid title thereto under the Main Line Grant, they should have asserted that valid title in their answer to the suit. We should not perhaps dispute this proposition, and this Maine Line title would of course have been asserted if its existence had been observed. But the Main Line lands being assumed to be free from challenge, and the Branch Line lands having been already challenged in the former litigations, the minds of the pleader and of counsel were directed solely to the controversy as to the Branch Line title, and the fact that these lands were included within the Main Line Grant remained unobserved by them until new counsel prepared the cause for argument in the Circuit Court of Appeals."

"If this were a suit at law in ejectment or the like, the failure to assert and put in issue the Main Line title might have been incurably fatal to any right or claim of the defendants thereunder."

"We do not understand, however, that this rule applies to equity causes; where it is perfectly competent for the court, in the exercise of a wise discretion, to protect the rights of parties by an adjudication upon the issues involved in the cause, made and expressed to be made without prejudice to any other claim not put in issue therein."

* * * * * * * * * * * *

"Third.)"

"AS TO LANDS SOLD BY THE SOUTHERN PACIFIC RAILROAD COMPANY BEFORE INSTITUTION OF SUIT AND THE RIGHTS OF PURCHASERS THEREOF (1) AS BONA FIDE PURCHASERS UNDER GENERAL PRINCIPLES OF LAW, (2) UNDER THE ACT OF MARCH 3 1887, (3) UNDER THE ACT OF MARCH 2, 1896.

"This subject is dealt with under the Tenth, Eleventh and Twelfth Points (pages 330 to 352) of the original brief of the appellants in this court."

* * * * * * * * *

"The decree in the Circuit Court adjudged primarily and as to all the defendants in the case that the United States is the owner by title in fee simple absolute of all the lands described in the bill, and thereupon enjoined the defendants and each of them 'from chopping upon or carrying from the said lands any trees, timber or wood, and *from claiming or asserting* any right, title or interest in or to the said lands or any thereof.' "

"These paragraphs of the decree would, of course, cut off and determine adversely to the *purchasers* any right, title or interest on their part in respect to said lands or any part thereof."

* * * * * * * * *

"However, as pointed out in the Twelfth Point of the original brief (pages 336 to 352), there intervened, between the passage of this decree in the Circuit Court and the argument of the appeal in this court, the act of Congress of March 2, 1896, quoted on pages 337 to 340 of that brief, which proceeded upon an entirely different theory, to wit, that 'no *patent* to any lands held by a bona fide purchaser shall be *vacated* or annulled, but the *right and title of such purchaser is hereby confirmed*' —that is to say, that instead of canceling the old patent and creating a new title, as was contemplated under the act of 1887, the act of 1896 protected the old patent against cancellation or annullment, and the purchasers' right and title thereunder was confirmed. And

in view of the provisions of this act of 1896, it was submitted on behalf of those purchasers that 'the decree of the court below in this suit should under any circumstances be reversed and the cause should be remanded to the Circuit Court with directions to that court to ascertain and determine which of the patented lands in controversy are held by bona fide purchasers within the meaning of that act, and to except such lands from the operation of any decree otherwise vacating or annulling any such patent.'"

"It is needless to repeat here the argument upon that subject contained in the Twelfth Point of the original brief, and we have but little to add to the suggestion contained therein."

* * * * * * * * *

"The appellants therefore pray that the said case may be reheard and a re-argument therein ordered, upon some day by the Court to be appointed, *as to the three classes of lands* involved in the suit herein above referred to, and that decrees be rendered in respect to such respective classes of lands as hereinbefore respectfully prayed."

"JOSEPH H. CHOATE,
J. HUBLEY ASHTON,
CHARLES H. TWEED,
of Counsel for Appellants."

Appendix (3).

Table of Dates.

Showing chronologically dates of grants, filing of maps, and other important acts.

Dec. 2, 1865.....Articles of incorporation of Southern Pacific Railroad Company filed in California, for a railroad "from some point on the Bay of San Francisco, in the state of California, through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San

Diego,to the town of San Diego, thence eastward through the said county of San Diego to the eastern line of of the state of California. (record 526.)

July 27, 1866....Act of Congress granting lands to Atlantic and Pacific Company from Springfield, Mo., to the Pacific ocean, and authorizing the Southern Pacific to make connection at state of California's boundary.

Nov. 23, 1866...Acceptance of this act by A. & P. R. Co. (record 641–643.)

Jan. 3, 1867.....Southern Pacific Railroad map of general route from San Francisco via Mojave to Colorado river at Needles, filed. (record 1400.)

Mar. 19, 1867.. Secrerary of Interior Browning orders withdrawal of lands on Southern Pacific general route map of 1867, *within thirty-mile limits, reserving future consideration as to conflict with other railroad routes.* (record 1273, 1274.)

July 14, 1868...Secretary of Interior Browning rejects Southern Pacific map of 1867 as being upon unauthorized route, and orders lands restored. (record 1275–1280.)

Aug. 20, 1868...Secretary of Interior suspends previous order of July 14, 1868. (record 1281, 1282.)

Nov. 2, 1869.....Secretary of Interior Cox vacates previous order of suspension of August 20, 1868, and rejects map of 1867, and orders lands restored. (record 921–923.)

Nov. 11, 1869...Secretary Cox upon reconsideration, confirms previous order of November 2, 1869, rejecting map and restoring lands. (record 889–892.)

Dec. 15, 1869...Secretary Cox suspends orders of November 2nd and 11th preceding, in view solely of pending Congressional legislation. (record 1289, 1290.)

Feb. 21, 1870...Secretary Cox rejects and refuses to approve a section of Southern Pacific Railroad constructed on map of 1867, as being unauthorized. (record 1283, 1284.)

April 4, 1870...California Legislature passed act authorizing Southern Pacific Railroad to connect with transcontinental railroad from the east at the *eastern boundary* of California, and to change its route and amend articles and accept additional grants from Congress.

June 28, 1870...Congress passed joint resolution authorizing Southern Pacific Railroad to construct upon the route as near as may be, shown by map of 1867 (from San Francisco via Mojave to Colorado river at Needles), and to receive patents to lands upon same terms, etc., as granted by act of July 27, 1866, "expressly saving and reserving the rights of actual settlers, *together with the other conditions and restrictions provided for in the 3rd section of said act.*"

March 3, 1871...Act of Congress granting lands to Southern Pacific Company and Texas Pacific Company, and authorizing the Southern Pacific Company to construct its road from Tehachapi Pass, via Los Angeles, to the Colorado river at Fort Yuma.

April 3, 1871 ..Southern Pacific map of general route from Mojave, via Los Angles, to Yuma filed. (record 872.) And orders of withdrawal. (record 927, 928.)

March 8, 1872 Atlantic & Pacific maps from Springfield, Mo., to Colorado river, filed in Interior Department. (record 2615.)

March 9, 1872 Atlantic & Pacific map of definite location of section from range 7 east, S. B. M., to west line of Los Angeles

County, filed in Interior Department. (For this map see plffs. ex. 14, not printed.) Filed and approved by Secretary April 11, 1872 (plffs. ex. 23, record 619, 622). Approved by Commissioner and lands withdrawn in 30-mile limits April 22, 1872. (Plffs. ex. 25, record 623, 624.) Withdrawal map. (record 874, 875, 876.)

Aug. 15, 1872....Atlantic and Pacific maps of definite location, covering sections (1) from Colorado river to range 7 east, S. B. M., (2) from west line of Los Angeles County to Pacific Ocean at Ventura, filed in Interior Department. (For these maps, see plffs. ex. 13, not printed.) Filed August 15, 1872. (record 626.) Approved by Secretary April 16, 1874. (plffs. ex. 26, record 626.) Lands withdrawn in 30 mile limits Nov. 23, 1874. (plffs ex 42, 43, record 877, 879.) Withdrawal maps. (record 868, 896, 924.)

May 9, 1873.....Secretary Delano decides that the joint resolution of June 28, 1870, made a new grant to the Southern Pacific Railroad upon a line of route not before authorized, and that lands reserved or disposed of prior to June 28, 1870, were not subject to grant. (record 1301–1305.)

May 11, 1874....*First section* Southern Pacific (branch) road as definitely located and constructed from San Fernando *via* Los Angeles to Spadra, filed in Interior Department. (Not printed.) Definite withdrawal within 20 and 30-mile limits, May 11, 1874. (For order and map of withdrawal, see record 1207–1210.) This section was accepted by United States May 9, 1874. (record 1415.)

Nov. 15, 1875....*Second section* Southern Pacific (branch)

road as definitely located and constructed from Spadra to range 1 west, filed in Interior Department. (Not printed.) Definite withdrawal within 20 and 30-mile limits December 20, 1875. (For order and map of withdrawal, see record 1210–1214.)

July 24, 1876 ... *Third section* Southern Pacific (branch) as definitely located and constructed from range 1 west to range 7 east, filed in Interior Department. (Not printed.) Definite withdrawal within 20 and 30-mile limits Aug. 19, 1876. (For order and map of withdrawal see record 1216–1220.)

March 6 1877.... *Fourth section* Southern Pacific (branch) as definitely located and constructed from San Fernando to Mojave, filed in Interior Department. (For map see defts. ex. 47 a; rec. 1476, 1477.) Definite withdrawal within 20 and 30-mile limits Mar. 27, 1877. (For order and map of withdrawal, see record 1220–1224.)

Jan. 31, 1878... *Fifth section* Southern Pacific (branch) as definitely located and constructed from range 7 east to Colorado river at Yuma, filed in Interior Department. (Not printed.)

Jan. 7, 1885 .... Sectional maps filed in Interior Department, showing Southern Pacific Railroad from Mojave to Colorado river at Needles, as constructed and located by authority of joint resolution of Congress, June 28, 1870. (record 1158, 1159. See also map not printed, plff's ex. 291 to 296 inclusive, sent up as original documents.)

July 6, 1886..... Act of Congress forfeiting Atlantic and Pacific Railroad grant, and restoring lands to public domain.

March 3, 1887....Act of Congress providing for adjustment of railroad land grants and protection of *bona fide* purchasers from railroad, of lands excepted from the grant.

June 7, 1887.....Decision of Secretary of Interior promulgated to the effect that grant to Atlantic and Pacific Railroad, in California, was not operated upon by Southern Pacific grant of 1871, and that the lands were restored to public domain. (5 L. D., 691; 6 id., 816; 6 id., 679; 6 id., 812.)

Nov. 22, 1889...Amended bill of complaint filed by United States in United States Circuit Court, Southern District of California, against Southern Pacific Railroad Company (defendants being then in court), alleging grant made to Atlantic and Pacific Railroad Company, definite location of road and forfeiture to United States of grant, and restoration to public domain by act of July 6, 1886. (record 644, 684.) Answer filed Dec. 30, 1889 (record 684–708.)

Nov. 12, 1892...Decision of above case of United States vs Southern Pacific Railroad Company by United States Supreme Court (146 U. S., 570–615–619), adjudging that Atlantic and Pacific Railroad Company received a valid grant from Congress, had definitely located its entire route, and that its entire grant in California had been forfeited and restored to the public domain free from any title or claim of the Southern Pacific Railroad Company. (record 825, 819)

May 14, 1894...This bill was filed by the United States against Southern Pacific Railroad Company, *et al.* (record 8330.)

Process served July 23, 1894. (record 40–41.)

Feb. 12, 1896....Act of Congress amending act of March 3, 1887, and providing for payment to Government by purchasers of difference in price paid to railroad on executory contracts for patented land and Government price.

March 2, 1896....Act of Congress confirming titles of *bona fide* purchasers from railroad of patented lands, and amending act of March 3, 1887.

Appendix (4).

Table of Land Sales.

Lands as to which the Circuit Court dismissed the bill, showing date of contracts of sale made by Southern Pacific, name of purchaser, contract price, amount paid, number of acres, and date of patent.

Explanations. (1) All of these lands were sold by executory contracts and were unpatented when contracted to be sold (except as to the 48th and 114th sales, which sales were made in 1895 *pendente lite*), and each contract contains a provision to the effect that the railroad has not secured title or patent for the land, and that if it fails to do so the contract shall be void and the company will refund the money paid. [record 2052, 2549, 2552.] (2) This table follows in its order that part of the decree dismissing the bill as to these lands. (3) The payments made on these lands were prior to filing supplemental answer, viz., on June 6, 1898 (rec. 200). (4) All the lands were patented *pendente lite.* [record 2563, 2576, 2585]. (5) Patented lands were sold by the railroad upon one form of contract, and those *unpatented* upon another. [rec. 2052, 2549.] The production of original contracts was waived. [rec. 2088.] (6) The facts concerning these sales, names

of purchasers, dates, price and contracts to sell are shown by Exhibit "A" to the verified supplemental answer. [rec. 202-206.] The lands now in question are shown by the latter part of the exhibit, commencing with contract No. 11206. [rec. 272-310.]

(1) September 21, 1892; W. M. and M. C. Bailey; contract price $400.00, paid $205.62; 321.29 acres; patented November 28, 1894. [rec. 272.]

(2) September, 21, 1892; W. M. and M. C. Bailey; contract price $400.00, paid $204.80; 320 acres; patented November 28, 1894. [rec. 272.]

(3) November 7, 1885; John C. Quinn; contract price $399.00, paid $244.05; 119.60 acres; patented December 22, 1894.

(4) November 7, 1885; Robert Hellman; contract price $397.00, paid $190.55; 158.80 acres; patented December 22, 1894.

(5) November 7, 1885; H. J. Goethe; contract price $400.00, paid $81.60; 40 acres; patented December 22, 1894.

(6) November 7, 1885; J. C. Quinn and H. J. Goethe, contract price $400.00, paid $192.00; 160 acres; patented December 22, 1894.

(7) December 3, 1885; Daniel Kalin; contract price $399.42, paid $236.40; 159.77 acres; patented December 22, 1894.

(8) December 3, 1885; James McCaw; contract price $399.12, paid $236.27; 159.65 acres; patented December 22, 1894.

(9) January 12, 1886; Fred W. Wilson; contract price ———; deed issued May 27, 1895; paid $512.00; 160 acres; patented December 22, 1894.

(10) March 16, 1886; A. J. Pommer; contract price $400.00, paid $512.00; 160 acres; patented December 22, 1894.

(11) December 9, 1885; Bernard Norton; contract price $401.40, paid $108.90; 80.56 acres; patented December 22, 1894.

(12) November 21, 1885; George H. Appell; contract price $402.20, paid $164.96; 80.88 acres; patented December 22, 1894.

(13) December 1, 1885; Wallace A. Briggs; contract price $1600.00, paid $1754.98; 560 acres; patented December 22, 1894.

(14) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $480.00, paid $153.76; 160 acres; patented November 28, 1894.

(15) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $480.00, paid $153.76; 160 acres; patented November 28, 1894.

(16) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $480.00, paid $153.76; 160 acres; patented November 28, 1894.

(17) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $480.00, paid $153.76; 160 acres; patented November 28, 1894.

(18) June 30, 1887. Geo. L. Arnold and C. M. Wells; contract price $640.00, paid $199.68; 160 acres; patented November 28, 1894.

(19) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $640.00, paid $199.68; 160 acres; patented November 28, 1894.

(20) June 30 1887; Geo. L. Arnold and C. M. Wells; contract price $800.00, paid $839.34; 160 acres; patented November 28, 1894.

(21) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $800.00, paid $839.34; 160 acres; patented November 28, 1894.

(22) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $800.00, paid $249.60; 160 acres; patented November 28, 1894.

(23) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $800.00, paid $249.60; 160 acres; patented November 28, 1894.

(24) June 30, 1887; Geo L. Arnold and C. M. Wells; contract price $800.00, paid $249.60; 160 acres; patented November 28, 1894.

(25) June 30, 1887; Geo L. Arnold and C. M. Wells; contract price $800.00, paid $249.60; 160 acres; patented November 28, 1894.

(26) May 31, 1887; John B. Young; contract price $1,920.00, paid $599.04; 640 acres; patented November 28, 1894.

(27) September 28, 1887; Geo. L. Arnold and C. M. Wells; contract price $480.00, paid $230.40; 160 acres; patented November 28, 1894.

(28) September 28, 1887; Geo. L. Arnold and C. M. Wells; contract price $640.00, paid $307.20; 160 acres; patented November 28, 1894.

(29) September 28, 1887; Geo. L. Arnold and C. M. Wells; contract price $640.00, paid $230.40; 120 acres; patented Nov. 28, 1894.

(30) April 21, 1885; M. L. Wicks; contract price $1600.00, paid $499.20; 640 acres; patented November 28, 1894.

(31) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $480.00, paid $122.88; 160 acres; patented November 28, 1894.

(32) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $480.00, paid $122.88: 160 acres; patented Nov. 28, 1894.

(33) May 24, 1884; Edward F. Beale; contraet price $296.00, paid $394.26; 296 acres; patented November 28, 1894.

(34) May 24, 1884; Edward F. Beale; contract price $8 25, paid $1:.08; 8.25 acres; patented November 28, 1894.

(35) May 24, 1884; Edward F. Beale; contract price $458.49, paid $610.71; 458.49 acres; patented November 28, 1894.

(36) May 24, 1884; Edward F. Beale; contract price $640.48, paid $853.12; 640.48 acres; patented November 28, 1894.

(37) May 24, 1884; Edward F. Beale; contract price $640.00, paid $852.44; 640 acres; patented November 28, 1894.

(38) May 24, 1884; Edward F. Beale; contract price $375.04, paid $499.52; 375.04 acres; patented November 28, 1894.

(39) January 18, 1894; Joseph B. Lippincott; contract price $493.20, paid $181.50; 98.64 acres; patented November 28, 1894.

(40) April 11, 1892; Geo. E. Lyman; contract price $400.00, paid $169.60; 160 acres; patented November 28, 1894.

(41) April 11, 1892; George R. Lyman; contract price $400.00, paid $169.60; 160 acres; patented November 28, 1894.

(42) April 11, 1892; George R. Lyman; contract price $400.00, paid $169.60; 160 acres; patented November 28, 1894.

(43) April 11, 1892; George R. Lyman; contract price $400.00, paid $169.60; 160 acres; patented November 28, 1894.

(44) April 12, 1895; Mrs. Elizabeth Schleismayer; contract price $960.00, paid $245.76; 120 acres; patented November 28, 1894.

(45) January 25, 1892; W. M. and M. C. Bailey; contract price $1360.00, paid $307.20; 320 acres; patented November 28, 1894.

(46) May 13, 1892; W. M. and M. C. Bailey; contract price $400.00, paid $102.40; 160 acres; patented November 28, 1894.

(47.) January 25, 1892; W. M. and M. C. Bailey; contract price $2720.00, paid $739.28; 640 acres; patented November 28, 1894.

(48) December 11, 1885; Charles Schwartz; contract price $1430.10, paid $1589.66; 572.04 acres; patented July 10, 1894.

(49) November 10, 1886; J. D. Frederickson; contract price $400.00, paid $73 60; 80 acres; patented July 10, 1894.

(50) March 24, 1885; Martin Kastler; contract price $1600, paid $528.00; 440 acres; patented July 10, 1894.

(51) March 31, 1885; Simon S. Nash; contract price $1628.45, paid $1055.21; 651.38 acres; patented July 10, 1894.

(52) March 31, 1885; Lewis E. Hillen; contract price $1639.35, paid $277.58; 171.01 acres: patented July 10, 1894.

(53) December 8, 1885; Benjamin Steinauer; contract price 795.00, paid $470.64; 318 acres; patented July 10, 1894.

(54) December 8. 1885; Rudolph J. Smith; contract price $400.00, paid 483.47; 160 acres; patented July 10, 1994.

(55) December 8, 1885; Xavier Schunrizer; contract price $398.05, paid $235.64; 159.22 acres; patented July 10, 1894.

(56) May 9, 1885; Kenneth McK. Ham; contract price $800, paid $518.40; 320 acres; patented July 10, 1894.

(57) June 15, 1885; J. L. Pavkovich; contract price $800, paid $339.20; 320 acres; patented July 10, 1894.

(58) May 5, 1885; George E. Bates; contract price $1600, paid $1516; 640 acres; patented July 10, 1894.

(59) April 16, 1885; Frank F. Freeman; contract price 1600, paid $1036.80; 640 acres; patented July 10, 1894.

(60) May 12, 1885; R. McD. Scriver; contract price $800, paid $339.20; 320 acres; patented July 10, 1894.

(61) November 21, 1885; John C. Quinn; contract price $800, paid $339.20; 320 acres; patented July 10, 1894.

(62) November 21, 1885; H. J. Goethe; contract price $800, paid 339.20; 320 acres; patented July 10, 1894.

(63) November 21, 1885; Thomas Norton; contract price $800, paid $249.60; 320 acres; patented July 10, 1894.

(64) November 25, 1885; James McCaw; deed issued November 21, 1894; paid $588.75; 156.59 acres; patented July 10, 1894.

(65) November 25, 1885; Rupert M. Meller; contract price $386.72, paid $185 60; 154.69 acres; patented July 10, 1894.

(66) December 3, 1885; John Lyndenmayer; contract price $800, paid $1051.10; 320 acres; patented July 10, 1894.

(67) December 3, 1885; John C. Quinn; contract price $800, paid $737.70; 320 acres; patented July 10, 1894.

(68) December 1, 1885; Wallace S. Briggs; deed issued September 18, 1894; paid $2,005.70; 640 acres; patented July 10, 1894.

(69) June 1, 1888; William Sexton: contract price

$400, paid $102.40; 160 acres; patented July 10, 1894.

(70) June 1, 1888; William Sexton; contract price $400, paid $102.40; 160 acres; patented July 10, 1894.

(71) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $400.00, paid $124.80; 160 acres; patented July 10, 1894.

(72) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $400.00, paid $124.80; 160 acres; patented July 10, 1894.

(73) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $400.00, paid $124.80; 160 acres; patented July 10, 1894.

(74) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $395.80, paid $123.48; 158.32 acres; patented July 10, 1894.

(75) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $400.00, paid $124.80; 160 acres; patented July 10, 1894.

(76) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $393.80, paid $122.86; 157.25 acres; patented July 10, 1894.

(77) July 11, 1887; Martin Seigel; deed issued January 10, 1896; paid 471.05; 160 acres; patented July 10, 1894.

(78) July 11, 1887; Martin Seigel; deed issued January 10, 1896; paid $471.05; 160 acres; patented July 10, 1894.

(79) July 9, 1887; Julia H. Pinkert; contract price $800.00, paid $473.60; 320 acres; patented July 10, 1894.

(80) July 9, 1887, Julius H. Pinkert; contract price $800.00, paid $473.60; 320 acres; patented July 10, 1894.

(81) June 28, 1887; Benjamin F. Smith; contract price $400 00, paid $236.80; 160 acres; patented July 10, 1894.

(82) June 28, 1887; Benjamin F. Smith; contract price $400.00, paid $214.40; 160 acres; patented July 10, 1894.

(83) April 11, 1887; Benjamin F. Nutting; deed issued May 3, 1885; paid $580.45; 160 acres; patented July 10, 1894.

(84) April 11, 1887; G. C. Mitchell; contract price $400.00, paid $214.40; 160 acres; patented July 10, 1894.

(85) July 9, 1887; N. G. Seibel; deed issued January 10, 1896; paid $1179.95; 320 acres; patented July 10, 1894.

(86) July 9, 1887; N. G. Seibel; contract price $800.00, paid $893.93: 240 acres; patented July 10, 1894.

(87) July 16, 1887; Judge W. Dayan; contract price $400 00, paid $236.80; 160 acres; patened July 10, 1894.

(88) July 9, 1887; N. G. Seibel; contract price $800.00, paid $118.40; 80 acres; patented July 10, 1894.

(89) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $160.00, paid $49.92; 160 acres; patented July 10, 1894.

(90) June 30, 1887; Geo. M. Arnold and C. M. Wells; contract price $160.00, paid $49.92; 160 acres; patented July 10, 1804.

(91) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $160.00, paid $49.92; 160 acres; patented July 10, 1894.

(92) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $160.00, paid $49.92; 160 acres; patented July 10, 1894.

(93) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $400.00, paid $124.80; 160 acres; patented November 28, 1894.

(94) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $405.50, paid $126.20; 161.80 acres; patented November 28, 1894.

(95) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $400.00, paid $124.80; 160 acres; patented November 28, 1894.

(96) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $403.55, paid $125.91; 161.42 acres; patented November 28, 1894.

(97) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $240.00, paid $74.88; 160 acres; patented November 28, 1894.

(98) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $240.00, paid $74.88; 160 acres; patented November 28, 1894.

(99) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $240.00, paid $74.88; 160 acres; patented November 28, 1894.

(100) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $240.00, paid $74.88; 160 acres; patented November 28, 1894.

(101) June 6, 1888; Elizabeth A. Beck; deed issued October 9, 1895; paid $1091.68; 320 acres; patented July 10, 1894.

(102) May 21, 1888; Myra Parish; contract price $400.00, paid $31.10; 40 acres; patened July 10, 1894.

(103) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $200.00, paid $62.40; 160 acres; patented July 27, 1895; November 22, 1894.

(104) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $200.00, paid $62.40; 160 acres; patented November 28, 1894.

(105) June 30, 1887; Geo. M. Arnold and C. M. Wells; contract price $200.00, paid $62.40; 160 acres; patented (Main line) July 27, 1895; (Branch line) November 28, 1894.

(106) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $200.00, paid $62.40; 160 acres; patented November 28, 1894.

(107) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $160.00, paid $49.92; 160 acres; patented November 28, 1894.

(108) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $160.00, paid $49.92; 160 acres; patented November 28, 1894.

(109) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $160.00; paid $49.92; 160 acres; patented November 28, 1894.

(110) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $160.00, paid $49.92; 160 acres; patented November 28, 1894.

(111) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $400.00, paid $124.80; 160 acres; patented November 28, 1894.

(112) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $400.00, paid $124.80; 160 acres; patented November 28, 1894.

(113) February 10, 1888; Isaac H. Bell; contract price $400.00;, paid $393 20; 160 acres; patented November 28, 1894.

(114) William Hillabolt; deed issued May 20, 1895. paid $562.40; 160 acres; patented November 28, 1894.

(115) November 12, 1887; G. L. Denison; contract price $480.00, paid $430.92; 160 acres; patented November 28, 1894.

(116) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $481.44; paid $150.20; 160.48 acres; patented November 28, 1894.

(117) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $240.00, paid $74.88; 160 acres; patented November 28, 1894.

(118) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $240.00, paid $74.88; 160 acres; patented November 28, 1894.

(119) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $240.00, paid 74.88; 160 acres; patented November 28, 1894.

(120) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $240, paid $74.88; 160 acres; patented November, 28, 1894.

(121) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $240, paid $74.88; 160 acres; patented November 28, 1894.

(122) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $240, paid; $74.88; 160 acres; patented November 28, 1894.

(123) June 30, 1887; Geo. L. Arnold and C. M. Wells; contract price $240, paid $74.88; 160 acres; patented November 28, 1894.

(124) June 30. 1887; Geo. L. Arnold and C. M. Wells; contract price $240, paid $74.88; 160 acres; patented November 28, 1894.

(125) May 24, 1884; Edward F. Beale; contract price $136, paid $181.17; 136 acres; patented November 28, 1894.

18. 24.

No. 152 and 185.

Stat. Brf. of Call for U. S.

Office Supreme Court U. S.
FILED
JAN 22 1901
JAMES H. McKENNEY,
Clerk.

Filed, Jan. 22, 1901.

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

Nos. 152, 185.

SOUTHERN PACIFIC RAILROAD COMPANY et al., appellants, v. THE UNITED STATES, APPELLEE. } No. 152.

THE UNITED STATES, APPELLANT, v. SOUTHERN PACIFIC RAILROAD COMPANY et al., appellees. } No. 185.

APPEAL AND CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

ADDITIONAL BRIEF FOR UNITED STATES.

JOSEPH H. CALL,
Special United States Attorney.

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

Nos. 152, 185.

SOUTHERN PACIFIC RAILROAD COMPANY et al., appellants, *v.* THE UNITED STATES, APPELLEE.	No. 152.
THE UNITED STATES, APPELLANT, *v.* SOUTHERN PACIFIC RAILROAD COMPANY et al., appellees.	No. 185.

APPEAL AND CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

ADDITIONAL BRIEF FOR UNITED STATES.

FIRST.

THAT LANDS WITHIN THE INDEMNITY LIMITS AS WELL AS THE GRANTED LIMITS OF THE ATLANTIC AND PACIFIC RAILROAD IN CALIFORNIA APPERTAIN TO THE GRANT TO THAT COMPANY, AND WERE THEREFORE EXCLUDED FROM THE GRANT TO THE SOUTHERN PACIFIC RAILROAD, HAS BEEN FINALLY AND CONCLUSIVELY ADJUDGED IN THE FORMER LITIGATIONS BETWEEN THE UNITED STATES AND THE SOUTHERN PACIFIC RAILROAD.

It is understood that in the recent case of *Hewitt* v. *Schultz*, decided January 7, 1901, it was held under section 6 of the grant to the Northern Pacific Railroad Company, which is in all respects similar to section 6 of the grant to the Atlantic and Pacific and Southern Pacific railroads, that there was no authority in the Secretary of the Interior to withdraw the indemnity lands as against *preemption* and *homestead* entries, so as to cut off or impair a preemption entry made after filing map of general route and of definite location, but whatever was intended to be ruled in that case, it is obvious for several reasons that it has no application to the present suit.

If it was finally adjudged in the former litigations between the Government and the Southern Pacific that *indemnity lands* of the Atlantic and Pacific Railroad Company were lands *pertaining* to the Atlantic and Pacific grant, that they were forfeited to the public domain by the act of Congress of 1886 without the Southern Pacific Railroad having acquired any interest in those lands, it can not be very important what was ruled in *Hewitt* v. *Schultz*.

In the case of the *United States* v. *Southern Pacific Railroad* (146 U. S., 615, 619) the record of which case is in evidence in the present suit (pp. 644, 684, 713, 819), the lands the subject of that suit were within the indemnity limits of the grant to the Atlantic and Pacific Railroad Company, and it was adjudged by the court that the lands within such indemnity limits, as well as those within the granted limits, covered by

the preceding case (146 U. S., 570), were not operated upon or taken by the Southern Pacific Company; and the court said (pp. 617, 618):

> It might well be assumed that very likely the Atlantic and Pacific Company might be called upon to select from indemnity lands a portion to make good the deficiency in the granted limits. That the right of selection was a prospective right, and if it was to be fully exercised no adverse title could be created to any lands within the indemnity limits. * * * That prospective right would be impaired by the transfer of the title of a single tract to the Southern Pacific. Hence it follows that the title to none of these indemnity lands passed or could pass to the Southern Pacific Company.

The later case of *Southern Pacific* v. *United States* (168 U. S., 1, 66) also involved lands within the *indemnity limits*, as well as granted limits, of the Atlantic and Pacific grant claimed by the Southern Pacific not only under its grant of March 3, 1871, but under its grant by section 18 of the act of July 27, 1866, and the joint resolution of Congress of June 28, 1870, and of the classes of lands involved in that cause the court said that among others were included—

> lands within the granted limits of the Southern Pacific grant and the *indemnity* limits of the Atlantic and Pacific grant; lands within the Southern Pacific *indemnity* limits and the Atlantic and Pacific granted limits; lands within the *common indemnity* limits of both grants (p. 47).

And in that case the court, after stating what the

issues were in the former suits, and what the claims and contentions of the respective parties were, stated (at pp. 61, 62) as follows:

> For the reasons stated, we are of the opinion that it must be taken in this case to have been conclusively adjudicated in the former cases as between the United States and the Southern Pacific Railroad Company—
>
> 1. That the maps filed by the Atlantic and Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to that company by the act of 1866.
>
> 2. That upon the acceptance of those maps by the Land Department, the rights of that company in the land so granted, attached, by relation, as of the date of the act of 1866; and
>
> 3. That in view of the conditions attached to the grant, and the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the forfeiture act of 1886, the property of the United States, and by force of that act were restored to the public domain, *without the Southern Pacific Railroad having acquired any interest therein that affected the power of the United States to forfeit and restore them to the public domain.*
>
> These grounds being accepted as the basis of our decision, the law in the present case is clearly for the United States; *for, as all the lands here in controversy are embraced by the maps of 1872, and, therefore, appertain to the line located by such maps*, it must be, for the reasons stated in the former decision, that the United

> States is entitled, as between it and the Southern Pacific Railroad Company, to the relief given by the decree below.

It appears, therefore, to have been finally and conclusively determined in the language of the court that the Atlantic and Pacific indemnity lands, as well as the others—

> are embraced by the maps of 1872, and therefore appertain to the line located by such maps.

The Southern Pacific Railroad, and the trustees in the mortgage of 1875, were parties to the former litigations and, as has already been shown on the brief for the Government, the Central Trust Company, trustee for the mortgage of 1888, is in privity with the Southern Pacific Company and was represented by it in the former suits.

With this recent final and conclusive determination against the claim of the Southern Pacific to the Atlantic and Pacific indemnity lands it may not be profitable to speculate upon what decision would be rendered if the matter were reargued as a new question.

But it was proven to the satisfaction of the court and determined in the former suits, and is established in this suit, that all of the indemnity lands of the Atlantic and Pacific Railroad Company were insufficient in quantity to supply the losses within the granted limits of the grant to that company.

In the case 146 U. S., 615, the court said, at page 616:

> The ordinary rule with respect to lands within the indemnity limits is that no title passes

> until selection. *Where, as here, the deficiency within the granted limits is so great that all the indemnity lands will not make good the losses*, it has been held in a contest between two railroad companies that no formal selection was necessary to give them to the one having the older grant as against the other company. (*St. Paul and Pacific Railroad* v. *Northern Pacific Railroad*, 139 U. S., 1.)
>
> And if the Atlantic and Pacific Railroad Company had constructed its road it would be difficult in the light of that decision to avoid the conclusion that all the lands within the indemnity limits passed to that company.

The evidence and admissions in the pleadings in that case established the fact found that the whole quantity of the indemnity lands was insufficient to supply the losses in the granted limits, and that fact further appears in the present case in the report of the Commissioner of the General Land Office for the year 1875, in which the Commissioner, from information compiled in his office, estimates that there will be a total loss in the grant to the Atlantic and Pacific Railroad Company of 2,000,000 acres. (Record, 1225.)

The limitation in the Southern Pacific grants (section 3 of the act of July 27, 1866) was doubtless also a controlling factor in the prior cases, adjudging that none of the lands either granted or indemnity could pass to the Southern Pacific. That provision is:

> That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been hereto-

> fore granted by the United States, so far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act.

The *deduction* was of the total *amount* granted to the former from the total *amount* granted to the latter. Bearing in mind that the Atlantic and Pacific was the *older grant* and *first located*, and that the routes are upon the "*same general line*" between Mojave and the Colorado River, and also upon the Southern Pacific branch line through the Soledad Pass between Mojave and Los Angeles, and the conclusion seems irresistible that all the Atlantic and Pacific lands were deducted from the Southern Pacific grants. The significance of this proviso is commented upon by the circuit court of appeals. (Record, 2661, 2662.)

SECOND.

IT IS SETTLED AS A MATTER OF LAW THAT THE INDEMNITY LANDS OF THE ATLANTIC AND PACIFIC RAILROAD APPERTAIN TO THE GRANT TO THAT COMPANY, AND WERE NOT OPERATED UPON BY ANY GRANT TO THE SOUTHERN PACIFIC COMPANY.

Aside from the effect of the decisions in the former cases as *res adjudicata* the several decisions of the court in the former suits ought to be taken as finally determining the rights of the Government to the Atlantic and Pacific lands as a question of law finally settled. (*United States* v. *Southern Pacific Railroad Company*, 146 U. S., 570, 615, 619; *Southern Pacific Railroad Company* v. *United States*, 168 U. S., 1, 66.)

THIRD.

INDEPENDENTLY OF THE DECISIONS IN THE FORMER SUITS AS EITHER RES ADJUDICATA OR AS PRECEDENTS IN THE PRESENT SUIT, THE ATLANTIC AND PACIFIC INDEMNITY LANDS, SET APART AND RESERVED IN 1872, CAN NOT BE TAKEN BY THE SOUTHERN PACIFIC UNDER ITS GRANTS OF 1871 OR 1870.

If, under the ruling in *Hewitt* v. *Schultz*, there was no requirement in section 6 of the grant to the Northern Pacific Railroad Company, or section 6 in the grant to the Atlantic and Pacific Railroad Company, for the withdrawal of the indemnity lands as against homestead and preemption entries, and even if there was no authority to withdraw them as against such entries there certainly was no prohibition against their being withdrawn as against their appropriation under *subsequent railroad grants* or as against any other mode of acquiring them.

Section 6 of the Northern Pacific and Atlantic and Pacific acts provided only that the lands not granted to the company were to be subject to preemption rights and homestead settlement, and it was for that reason that the contention was made so earnestly in the Interior Department that indemnity lands could not be withdrawn from homestead or preemption entry.

In the present case the Atlantic and Pacific indemnity lands are not only insufficient to supply the losses within the primary limits, but these indemnity lands were withdrawn and set apart in 1872 upon the filing of the map of definite location of the Atlantic and Pa-

cific Railroad, and at that time they were not only reserved from homestead and preemption entries, but they were also reserved from all other modes of "*location*" or "*entry*," which reservation remained unrevoked when the present suit was commenced. (Record 624, 878.)

Upon filing the two Atlantic and Pacific maps, which were filed on March 9, 1872, the Commissioner, in his order of April 22 of the same year, said in his directions to the officers of the local land office:

> You are hereby directed to withhold from preemption or homestead entry, *private sale*, or *location* all the odd-numbered sections falling within those limits (thirty-mile limits), both surveyed and unsurveyed.

And in his order to the same officers, November 23, 1874, upon the remaining two maps in California, filed by the Atlantic and Pacific Railroad Company on August 15, 1872, the Commissioner said:

> You will accordingly withhold from *sale* or *entry* all the odd-numbered sections falling within the thirty-mile limits shown on the diagrams.

That this reservation of these lands for the Atlantic and Pacific Railroad Company in 1872 and before the Southern Pacific filed its map of definite location on either its main or branch line, and which reservation was in aid of an *earlier grant* operated to prevent any of those lands from passing to the Southern Pacific, has been considered and fully presented in the brief heretofore filed on behalf of the Government. (See pp. 65-103.)

And the following authorities are relied upon in support of this contention:

Wolcott v. *Des Moines Company*, 5 Wall., 681.

Hamblin v. *Western Land Company*, 147 U. S., 531.

Northern Pacific v. *Musser-Sauntry Co.*, 168 U. S., 604, 610, 611.

Wisconsin Railroad v. *Forsythe*, 159 U. S., 46, 57.

Spencer v. *McDougal*, 159 U. S, 62.

Chicago Railroad v. *United States*, 159 U. S., 372, 375.

Finally the entire *quantity* of lands in the Atlantic and Pacific grant was to be *deducted* from the Southern Pacific grant so far as the routes are on the same general line, which description covers the lands involved in the present case.

Submitted.

JOSEPH H. CALL,
Special United States Attorney.

O

Office Supreme Court U.S.
FILED
JAN 18 1902
JAMES H. McKENNEY,
Clerk.

Nos. 18 & 24.

Motion to correct judgment.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Jan. 18, 1902.

Nos. 18 and 24.

THE SOUTHERN PACIFIC RAILROAD COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES, APPELLEE.

THE UNITED STATES, APPELLANT,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY ET AL., APPELLEES.

MOTION TO OPEN AND CORRECT JUDGMENT.

JOSEPH H. CALL,
Special U. S. Attorney.

WASHINGTON, *January* 16, 1902.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States

OCTOBER TERM, 1901.

Nos. 18 and 24.

THE SOUTHERN PACIFIC RAILROAD COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES, APPELLEE.

THE UNITED STATES, APPELLANT,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY ET AL., APPELLEES.

MOTION TO OPEN AND CORRECT JUDGMENT.

Comes now the United States and moves this honorable court to open and correct the judgment of the court rendered in pursuance of the opinion in the above-entitled cause on the 6th day of January, 1902, by further directing the circuit court to enter a decree in favor of the Government for those lands outside of the 20-mile limits of the grant to the Southern Pacific railroad of 1866, but within

the 30-mile limits of the grant made to that company by the act of 1871, and overlapped by the 30-mile limits of the grant to the Atlantic and Pacific Railroad Company by the act of 1866.

The court appears to have inadvertently assumed that title to the lands within the overlap of the Southern Pacific Railroad *branch line* and the Atlantic and Pacific grant were adjudicated in the *former cases* between the United States and the Southern Pacific Railroad Company, reported in 146th U. S., 570, 619, and 168th U. S., 1, 66, doubtless owing to the fact that the weight of the argument and the mind of the court was directed to the more acute controversies between the Government and the railroad company as to the conflict between the Southern Pacific *Main Line* grant of 1866 and the Atlantic and Pacific grant of the same date. We do not ask the court to reopen or reconsider any question which has been under consideration and decided by the court, but to give to the Government a decree for that large body of lands not embraced in former litigations and which are within the Southern Pacific branch line and overlapped by the Atlantic and Pacific grant, which lands are embraced by the bill and were decreed to the Government by the courts below (Record, pp. 354–362), and the titles to which lands are conceded to be in the United States.

The bill of complaint in the present suit (Record, pp. 3–37) sets forth the grant to the Atlantic and Pacific railroad, and the filing by that company of its maps of definite location, and the forfeiture of that grant within both primary and indemnity limits, and then alleges:

"And said lands were restored to the public domain, including all the odd number of sections of land for 30 miles on each side of said route of said Atlantic and Pacific Company definitely fixed as aforesaid between the eastern boundary of California and the Pacific ocean at San Buena Ventura, which lands are still owned by your orators."

The bill sought to quiet the title of the United States to all of said lands and to vacate any patents theretofore issued to any of such lands, except only those lands embraced in *former litigations* which are *there described in the bill*, and as to which lands no relief is sought in the present case (Record, pp. ~~36, 37~~). 8-18

All of the lands involved in former litigations are there described in the bill and can be readily placed upon the map showing the overlapping grants, which is found in the record in the present case at page 640, and it will be seen that a body of lands estimated at about 600,000 acres, *which were not embraced in former litigations* and *which are outside of the 20-mile limits of the Southern Pacific grant of 1866, are embraced by the bill in this case*, and that no disposition has been made of them under the judgment of the court entered on the 6th day of January, 1902, although both courts below quieted the title of the United States to these lands, and the opinion of this court concedes the title of the Government to them.

The answer of the Southern Pacific Railroad Company took issue upon the allegations of the bill as to the title of the United States to these lands (Record, pp. 55–89), and the evidence of both sides was directed to the question of ownership, and the Government, relying upon the estoppel by reason of the former adjudications as well as upon the merits, introduced in evidence the records of the cases reported in 146th U. S., 570, 619, and which records are found in the record in the present suit at pages 644 to 825.

The case of The United States *vs.* The Southern Pacific Railroad, reported in 146th U. S., 570, was brought for certain tracts of land situated within the primary or 20-mile limits of the Atlantic and Pacific grant overlapped by the primary or 20-mile limits of the grant to the Southern Pacific railroad by the act of March 3, 1871.

The case of The United States *vs.* The Southern Pacific Railroad, reported in 146th U. S., 615, 619, was brought for

certain tracts of land situated within the *indemnity limits* of the Atlantic and Pacific grant of 1866 and the primary limits of the grant to the Southern Pacific railroad, act of March 3, 1871, and in both cases this court adjudged the title to be in the United States and directed that decrees be entered by the circuit court for the relief sought.

The later case of The Southern Pacific Railroad *vs.* The United States, 168th U.S., 1–66, was brought for certain lands within the overlap of the Southern Pacific Branch Line grant and the Atlantic and Pacific grant, in which case the court said (168th U. S., 46, 47):

"The lands now in controversy are situated opposite to and are coterminous with the first, second and fourth sections of the Southern Pacific railroad as constructed between 1873 and 1877, inclusive, and within the primary and indemnity limits of the grant to the Southern Pacific Railroad Company made by the 23d section of the Texas and Pacific act of March 3, 1871; the 61,939.62 acres patented to that company being opposite to the first and fourth sections of its road. It may be said that the lands here in dispute belong to one or the other of the following classes: Lands within the common granted limits of both the Atlantic and Pacific grant of 1866 and the Southern Pacific grant of 1871; lands within the granted limits of the Southern Pacific grant and the indemnity limits of the Atlantic and Pacific grant; lands within the Southern Pacific indemnity limits and the Atlantic and Pacific granted limits; lands within the common indemnity limits of both grants. Of those in dispute, 219,012.93 acres have not been surveyed by the United States."

And the decree of the circuit court for *all the lands involved in that suit* and embraced within the *four classes* of land as defined by the court was entered in favor of the Government against the Southern Pacific Railroad Company and was affirmed by this court. The court rested its decision upon the authority of the cases in 146th U. S., 570, 619, and determined that the title to none of the lands within the Atlantic and Pacific Railroad grant, either *pri-*

mary or indemnity limits, could be taken by the Southern Pacific Railroad Company under its grant of March 3, 1871.

In the present case the decree of the circuit court, which was affirmed by the circuit court of appeals, quieted the title of the United States to all of the lands for which the present bill was brought except those particular lands embraced in former litigations, and which are described in the bill as well as in the decree, and except those lands sold by the Southern Pacific Railroad Company, which were dismissed from the case while in the circuit court.

The concluding paragraph of the opinion of the court in the present case, filed on January 6, 1902, and upon which the judgment of the court was entered, provides as follows:

"The decree of the circuit court of appeals of the ninth circuit, affirming the decree of the circuit court for the southern district of California will be reversed and the case remanded to the circuit court with instructions to enter a decree quieting the title of the United States to an equal undivided moiety in all alternate sections within the place or granted limits of the Atlantic and Pacific in California, so far as those limits conflict with the like limits of the Southern Pacific, excepting therefrom those lands in respect to which there has been some prior adjudication, and to dismiss the bill as to all other lands without prejudice to any future suit or action."

The court has made no disposition whatever of the 600,000 acres of land to which the Government asserted title by its bill, which title was disputed by the answer of the defendants, and to which the title of the Government is sustained by the evidence upon the merits, and by the former adjudications of this court, unless the title is disposed of in that part of the judgment which directs the circuit court "to dismiss the bill as to all other lands without prejudice to any future suit or action."

That the Government was entitled to a decree for these lands was practically conceded by counsel for the Southern Pacific Company, and is conceded by the court by reason of the prior adjudications, but the court has made no provision in its judgment for preserving the rights of the Government to them, but has directed that the decrees of the courts below be *reversed*, and then directs that a decree be entered in favor of the Government for an *undivided moiety of the lands upon the main line*, and appears to have overlooked the circumstance that these other lands upon the branch line are also embraced by the bill and by the decrees of the courts below (Record, pp. ~~34 and 353~~). E, 336

These lands for which the court has made no provision in its judgment, which are upon the Southern Pacific *branch line* and *outside of the main-line grant* to that company, and which were not embraced in any former adjudication, are among the most valuable of the lands involved in the present case, and are probably worth more than three-fourths of all the lands in suit. They are lands which are largely embraced in the United States forest reservations known as the San Bernardino, Pine Mountain, and Zaca Lake reservations. The protection of the title of the Government to these lands and the protection of these forest reserves is a matter of supreme importance to the inhabitants of southern California and is becoming more important each year. The great industries in citrus fruit culture in that part of the State are largely dependent for water supply by irrigation from these forest reserves, and it would be a great disappointment for the court to omit to quiet the title of the United States to these lands, to which relief the Government is so clearly entitled and which after years of litigation it had properly secured in the courts below.

The fact that these lands in the Southern Pacific Branch Line grant and overlap of the Atlantic and Pacific grant are involved in this suit was clearly and fully set forth and

argued in the brief for the Government. (See pages 13–18 also pages 91, 92, 95, 103.)

The annexed diagram illustrates the situation of the overlapping of the grants of the Southern Pacific branch line of 1871 and its grant of 1866 with the Atlantic and Pacific grant of the same date, and shows approximately the lands embraced in the former litigations, and as to which no relief was sought by the present bill and which were excepted from the decree in the cross-bill, and also shows the lands to which the Government is entitled to a decree and which it had in the courts below.

For the further convenience of the court there is also presented with this petition a copy of the diagram at page 640 in the record in the present suit upon which the townships of land embraced in the former litigations are marked by a cross with a blue pencil.

As before stated, the description of these lands, embraced in such former litigations and not included in the present bill, is set forth in the bill itself and in the decree of the circuit court, and the description is also given in the opinion of this court in 168 U. S., at page 24. The court will readily observe that the lands embraced in the former litigations included lands in both the indemnity and place limits of the Southern Pacific and Atlantic and Pacific grants, and that the lands to which the Government is entitled to a decree, embraced by the present bill, include the remainder of the lands of those classifications, which this court has repeatedly said are owned by the Government, and that the Southern Pacific has no right to them.

In the opinion of the court in the present case, filed on January 6, 1902, the court, quoting from the opinion in The Southern Pacific Railroad *vs.* The United States, 1, said:

'The Southern Pacific Railroad Company constructed the road thus contemplated, and claims that the lands here in dispute passed to it under the above act of 1871.'

So also on page 46:

'The lands now in controversy are situated opposite to and are coterminous with the first, second and fourth sections of the Southern Pacific railroad as constructed between 1873 and 1877, inclusive, *and within the primary and indemnity limits of the grant of the Southern Pacific Railroad Company* made by the twenty-third section of the Texas and Pacific act of March 3, 1871.'

"And on page 61 the conclusion was summed up in these words:"

'For the reasons stated, we are of the opinion that it must be taken in this case to have been conclusively adjudicated in the former cases, as between the United States and the Southern Pacific Railroad Company—

"1. That the maps filed by the Atlantic and Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to that company by the act of 1866;

'2. That upon the acceptance of those maps by the Land Department the rights of that company in the lands so granted, attached, by relation as of the date of the act of 1866; and

'3. That in view of the conditions attached to the grant, and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the forfeiture act of 1886, the property of the United States, and by force of that act were restored to the public domain without the Southern Pacific Railroad Company having acquired any interest therein that affected the power of the United States to forfeit and restore them to the public domain.

'These grounds being accepted as the basis of our decision, the law in the present case is clearly for the United States; for, as all the lands here in controversy are embraced by the maps of 1872, and therefore appertain to the line located by such maps, it must be, for the reasons stated in the former decision, that the United States is entitled, as between it and the Southern Pacific Railroad Company, to the relief given by the decree below.

"Obviously the fact settled by the decisions in those cases was the filing by the Atlantic and Pacific of an approved

map of definite location. Upon that the controversy hinged. Such a map having been filed the title of Atlantic and Pacific vested as of the date of the act of July 27, 1866, and inasmuch as the Southern Pacific claimed only by a grant of date March 3, 1871, it took no title. This which is apparent from the foregoing quotation is emphasized by the full discussions in the opinions, as well as by the allegations in the pleading upon which the cases were tried. That fact having been determined must be taken in the present suit as not open to dispute. The Atlantic and Pacific did file a sufficient map of definite location of its line from the Colorado river to the Pacific ocean, and such map was approved by the Secretary of the Interior. Its title, therefore, to the land within the limits of the grant in California took effect as of date July 27, 1866. No claim of right or title arising only in 1871 and created by an act of that date could affect its title."

Throughout the entire opinion the court concedes the title of the United States to all of the lands within the Atlantic and Pacific grant, both primary and indemnity, so far as overlapped by the Southern Pacific grant of 1871, primary and indemnity, outside of the 20-mile limit main-line grant of the Southern Pacific of 1866, and thereby concurs in the view of the circuit court of appeals that the Government is entitled to a decree for these lands, but in its present form the judgment of this court reverses the decrees of the courts below for these very lands which this court as well as the courts below thinks the Government is entitled to hold

We would therefore suggest that the judgment be so modified as to affirm the decrees of the courts below as to these lands, or, if the decrees be reversed, that the circuit court be instructed "to enter a decree in favor of the Government for the alternate sections of land described by odd numbers, and embraced by the bill situated within the 30-mile limits of the Southern Pacific grant of 1871 so far as they are also within the 30-mile limits of the Atlantic and

Pacific grant of 1866, but outside of the 20-mile limits of the Southern Pacific grant of 1866."

II.

All of these 600,000 acres of land as to which we seek correction of the decree are within the limits of the Southern Pacific grant of 1871 and outside of the 20-mile limits of the Southern Pacific grant of 1866, and most of them are outside of the 30-mile or indemnity limits of the Southern Pacific grant of 1866, but a part of the lands are situated within the common-indemnity limits of the Southern Pacific grant of 1866 and indemnity limits of the Atlantic and Pacific grant.

It may therefore be claimed by the Southern Pacific that it has a naked right to select such indemnity lands to supply deficiencies within its place limits.

But such right, even if it exists, does not confer a present title or right to any tract of land until the selection has been made and approved by the Secretary of the Interior. This is the established doctrine of this court and has been lately reiterated in Hewitt *vs.* Schultz, 180 U. S., 139, and in the more recent cases of Southern Pacific Railroad *vs.* Bell and Otto Groeck, decided January 13, 1902, and in which cases the court held that the Secretary of the Interior had no power to reserve indemnity lands for the Southern Pacific railroad prior to a selection of such lands by the company. The Southern Pacific, therefore, can maintain no pre-existing right or title to such indemnity lands without having an approved selection of them any more than can a person claim and hold a part of the public domain because he is entitled under the law to make a homestead or pre-emption entry of a part of it.

The Southern Pacific Company is not entitled to select any part of the lands of the Atlantic and Pacific railroad as

indemnity or otherwise, for, as was said by this court in Chicago Railroad *vs.* The United States, 159th U. S., 372:

"No part of the lands granted in aid of the construction of one road could be applied in aid of the other road."

In Sioux City Railroad *vs.* The United States, 365, 368, the court said:

"The grants for the Sioux City and Milwaukee roads were by the same act. Of the granted sections in place limits common to both roads, each company, having filed its map of definite location, took, as of the date of the grant, an equal undivided moiety—no more. The equal undivided moiety granted for one road was not granted, nor could be used, for the other road. Congress knew, when it passed the act of 1864, that there would be an overlapping of place limits at the required point of intersection of the two roads. And the Sioux City Company when it accepted the benefit of the grant, knew that such must be the case. As the act did not provide for a selection of lands for either road, on account of the undivided moiety for place lands granted for the other, we may not assume that the right to such selection was intended to be reserved. *Lands lost to the Sioux City Company in one of the modes named in the act of Congress and for which other lands could be selected, were lands granted for that company, not lands granted to another company for a different road.* The lands which the Sioux City Company claims to have so lost—namely, the undivided moiety granted and subsequently awarded to the Milwaukee Company out of the common place limits—were never granted for the Sioux City road, but were granted for the McGregor or Milwaukee Company."

It is clear from the adjudged cases that the Southern Pacific Company cannot invade the Atlantic and Pacific grant to select indemnity therein.

However, nearly all the lands for which we seek a modification of the judgment of January 6, 1902, are wholly outside of the 30-mile limits of the Southern Pacific grant and within the Atlantic and Pacific grant, and are therefore

lands to which the Atlantic and Pacific Company had a "present or prospective right" within the meaning of section 23 of the grant of March 3, 1871.

U. S. *vs.* S. P. R., 146 U. S., 615, 619.
S. P. R. *vs.* U. S., 168 U. S., 1.

Respectfully submitted.

JOSEPH H. CALL,
Special U. S. Attorney.

To MAXWELL EVARTS, Esq., and LEWIS E. PAYSON, Esq.,
Attorneys and Counsel for the Appellants in the Above-entitled Cause, No. 18, and for the Appellees in No. 24:

You will please take notice that the United States will on the 20th day of January, A. D. 1902, on the meeting of the Supreme Court of the United States on that day, or as soon thereafter as counsel can be heard, submit for the consideration of the court the foregoing motion.

JOSEPH H. CALL,
Special U. S. Attorney.

WASHINGTON, *January* 16, 1902.

APPENDIX.

It is further submitted that if the court be of the opinion that the Southern Pacific may be entitled to assert in this suit *a right to select those* lands within the *indemnity limits* of its grant of *1866* which are outside of the granted limits of the Atlantic and Pacific *grant*, but which are within the indemnity limits of the latter grant, that then the circuit court should be directed—

"to enter a decree quieting the title of the United States for "those lands embraced by the bill which are outside of the "20-mile or indemnity limits of the Southern Pacific grant "of 1866, but which are within the 30-mile limits of the "Southern Pacific grant of 1871 and within the 30-mile "limits of the Atlantic and Pacific grant, excepting there- "from those lands within the common indemnity limits of "the Southern Pacific grant of 1866 and Atlantic and Pa- "cific grant, and further quieting the title of the United "States to an equal undivided moiety in all alternate sec- "tions within the place or granted limits of the Atlantic "and Pacific in California, so far as those limits conflict "with the like limits of the Southern Pacific, excepting "therefrom those lands in respect to which there has been "some prior adjudication, and to dismiss the bill as to "all other lands without prejudice to any future suit or "action."

5344

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 185. 24

THE UNITED STATES, APPELLANT,

v.

THE SOUTHERN PACIFIC RAILROAD COMPANY (D. O. MILLS AND HOMER S. KING, TRUSTEES) AND THE CENTRAL TRUST COMPANY OF NEW YORK.

CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED JANUARY 16, 1900.

(17,000.)

(For record on main appeal see No. 183.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 185.

THE UNITED STATES, APPELLANT,

v.

THE SOUTHERN PACIFIC RAILROAD COMPANY (D. O. MILLS AND HOMER S. KING, TRUSTEES) AND THE CENTRAL TRUST COMPANY OF NEW YORK.

CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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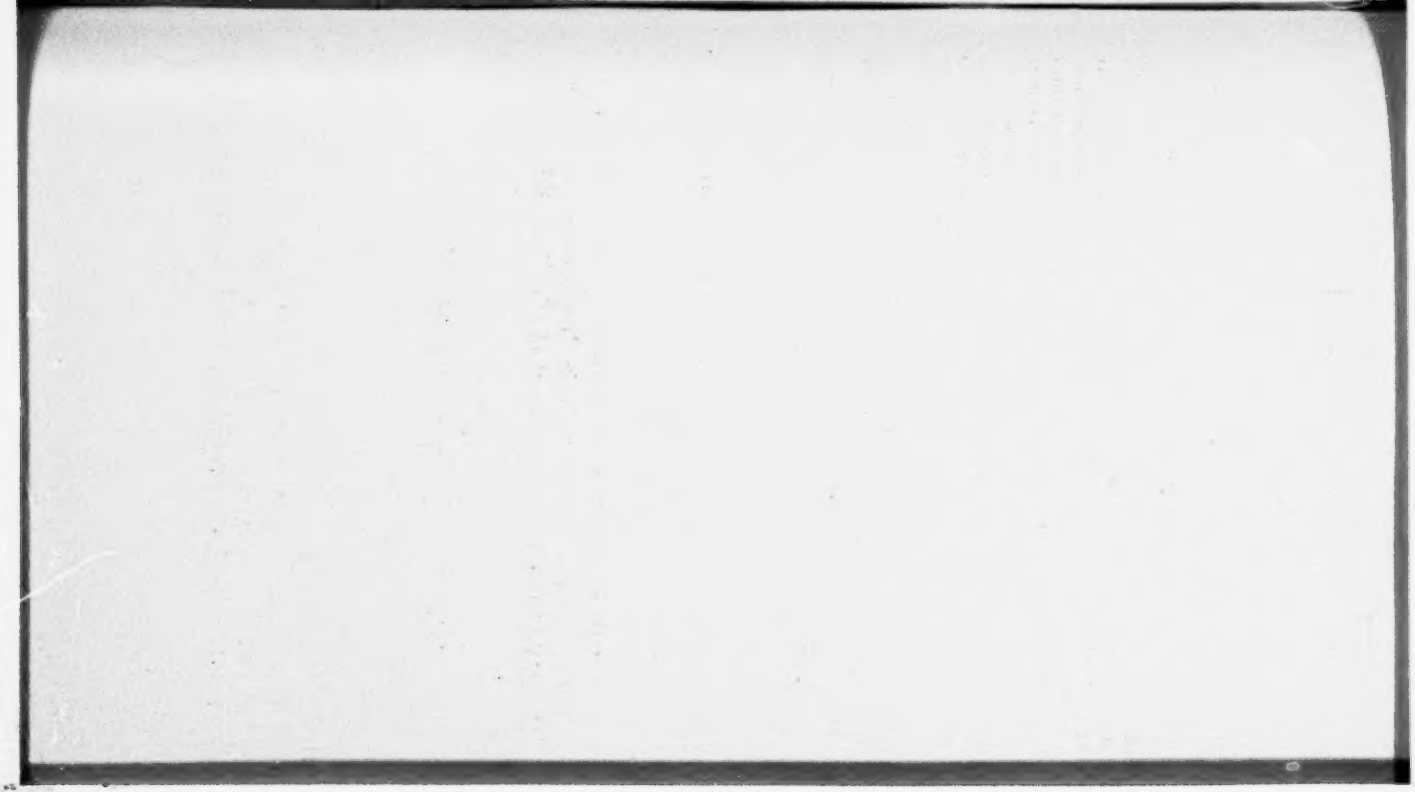

UNITED STATES OF AMERICA—ss.

Citation.

To The Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, and the Central Trust Company of New York, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the city of San Francisco, in the State of California on the twenty-eighth day of November, A. D. 1898, pursuant to an order allowing an appeal entered in the Clerk's office of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, from a final decree made and entered on the sixth day of June, 1898, in that certain cause, being in equity, No. 600, wherein the United States of America are complainants and appellants and you are defendants and appellees, to show cause, if any there be, why the said decree rendered against said appellants as in the said order allowing the appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this twenty-first day of November, A. D. 1898, and of the Independence of the United States, the one hundred and twenty-third.

ERSKINE M. ROSS,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, appellants, vs. The Southern Pacific Railroad Company et al., appellees. Citation.

Copy hereof received November 21, 1898, subject to all objections.

WILLIAM SINGER, Jr.,
Attorney for Defendants.

Filed Nov. 21, 1898. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA, Complainants, vs. SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and HOMER S. KING, Trustees, and CENTRAL TRUST COMPANY OF NEW YORK, Defendants.	No. 600.

Petition for, and Order Allowing Appeal.

To the Judges of the United States Circuit Court, Ninth Circuit:

The United States of America, conceiving themselves aggrieved by the decree made and entered herein on the

sixth day of June, 1898, appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and file herewith their assignment of errors, asserted and intended to be urged upon appeal, and they pray that their appeal may be allowed; and further pray that upon this appeal being allowed, that all proceedings in this cause may be stayed, pending such appeal.

And your petitioners further pray that in pursuance of the provisions of section 1013, United States Revised Statutes, and of section 11, of the act of Congress of March 3, 1891, establishing the Circuit Courts of Appeal, that the transcript of the record filed in the said Circuit Court of Appeals, Ninth Circuit, by the defendants herein upon their appeal heretofore allowed, may be used by both parties, and that your petitioners may be heard thereon in the same manner as if records had been filed by the appellants in both cases.

Dated this thirty-first day of October, 1898.

JOSEPH H. CALL,

Special Assistant United States Attorney and of Counsel for United States.

Order Allowing Same.

The foregoing petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the transcript of the record filed in the said Circuit Court of Appeals by the defendants herein, upon their appeal heretofore allowed, may be used by both parties, and that this appeal of the United States may be heard thereon in the same man-

ner as if records had been filed by the appellants in both cases, and to the end that a full and complete transcript of the record shall be made and transmitted to said Circuit Court of Appeals, the clerk of this Court shall make and transmit to the said Circuit Court of Appeals in addition to the record filed by the defendants on their appeal, a true copy of the petition of the United States for appeal, their assignment of errors, the order allowing appeal and all other proceedings in the case, not included in the transcript of the record filed by the defendants, as aforesaid.

Dated this thirty-first day of October, 1898.

ROSS,
Circuit Judge.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Complainants,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and HOMER S. KING, Trustees, and CENTRAL TRUST COMPANY OF NEW YORK,
Defendants.
No. 600.

Assignment of Errors.

The United States, in connection with their petition for appeal therein, present and file therewith their assign-

ment of errors, as to which matters and things they say that the decree entered herein on June 6, 1898, is erroneous, towit:

1. The Court erred in decreeing that the United States take nothing as to the lands, or any of them, adjudged by said decree to have been sold by the Southern Pacific Railroad Company to third persons in good faith and for value, being the lands described on pages No. 15 to No. 20, inclusive, of said decree, except the southeast one-quarter of section 25, township 9 north, range 15 west, San Bernardino meridian, it appearing that said lands had been contracted to be sold by said railroad company to third persons upon partial payments, and that only a part of the purchase price had been paid, and that no sale had been completed or deed to any of said lands executed, prior to the commencement of this suit.

2. The Court erred in refusing to adjudge the United States to be the owners and to quiet their title to the said lands or any of them.

3. The Court erred in refusing to adjudge that the defendants had no title or interest in said lands or any of them.

4. The Court erred in refusing to adjudge the United States to be the owner of the legal title to said lands and of all interest and estate claimed by the Southern Pacific Railroad Company therein, subject only to the equities in favor of said purchasers respectively to the equities in favor of said purchasers respectively to the amounts actually paid upon the purchase price.

5. The Court erred in adjudging that patents issued by the United States to defendant Southern Pacific Railroad

Company for said lands, pending this suit, granted to or conferred upon the defendants or any of them, any right, title or interest in said lands or any of them.

6. The Court erred in adjudging that said lands described aforesaid, or any of them, were sold by the Southern Pacific Railroad Company to third persons in good faith or for value.

7. The Court erred in adjudging that the terms of the contracts, under which said purchasers and each of them contracted to purchase said lands, did not carry notice to such purchasers, and each of them, of the right and title of the United States to said lands.

8. The Court erred in adjudging that its said decree shall not cancel or vacate any point issued by the United States to the Southern Pacific Railroad Company for lands sold by it to a bona fide purchaser.

9. The Court erred in refusing to adjudge what title and rights the defendants before the Court had in said lands.

10. The Court erred in refusing to give the United States a decree for those lands adjudged to have been sold by the Southern Pacific Railroad Company since November 22, 1889, the date of commencement of the suits in the cases reported in 146 U. S. 615-619.

11. The Court erred in refusing to adjudge that the Southern Pacific Railroad Company and those in privity with that company, who contracted to purchase lands while the former suits reported in 146 U. S. 615-619, were pending, were not bound by the adjudications in those cases.

12. TheCourt erred in adjudging that any executory contract for the sale of land made by the Southern Pacific

Railroad Company is valid as to any payment made thereon after notice to the purchaser of the rights of the United States.

Wherefore, the United States prays that said decree may be reversed in said particulars and that the United States be granted the relief therein set forth.

JOSEPH H. CALL,

Special asistant United States attorney and of counsel for the United States.

[Endorsed]: No. 600. In United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co. *et al.* Petition for Appeal, etc.

Filed October 31, 1898. Wm. M. Van Dyke, Clerk. Joseph H. Call, special United States attorney.

In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

THE UNITED STATES OF AMERICA, Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, Trustees, and the CENTRAL TRUST COMPANY of New York, Defendants.

No. 600.

Clerk's Certificate to Transcript.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, do hereby certify the foregoing six (6) typewritten pages, numbered from one to six inclusive, and comprised in one volume, to be a full, true and correct copy of the petition of the United States for appeal, their assignment of errors, and the order allowing the appeal, the same being all proceedings in the case not included in the transcript of the record filed in the United States Circuit Court of Appeals by the defendants herein, upon their appeal heretofore allowed, and that the same together constitute the transcript of the record on appeal to the United States Circuit Court of Appeals of the Ninth Circuit in said cause, in ac-

cordance with the order allowing and granting the petition for appeal by the United States, and prayer for *supersedeas.*

I do further certify that the cost of the foregoing record is $4.10, the amount whereof is to be paid me by the United States of America, the appellants in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, this twenty-fifth day of November, in the year of our Lord, one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-third.

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

[Seal]

[Cancelled 10-ct. Internal Revenue Stamp.]

[Endorsed]: No. 495. In the United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, appellants, vs. The Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, and the Central Trust Company of New York, appellees. Appeal from the Circuit Court of the United States for the Southern District of California. Transcript of Record.

Filed November 28, 1898.

F. D. MONCKTON,

Clerk.

10 At a stated term, to wit, the October term, A. D. 1898, of the United States circuit court of appeals for the ninth circuit, held at the court room in the city and county of San Francisco on Wednesday the third day of May, in the year of our Lord one thousand eight hundred and ninety-nine. Present: The Honorable William B. Gilbert, circuit judge; Honorable William W. Morrow, circuit judge; Honorable Thomas P. Hawley, district judge.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE SOUTHERN PACIFIC RAILROAD COMPANY ET AL. } No. 495.

Ordered appeal argued by Joseph H. Call, esquire, special United States attorney, and William Singer, jr., esquire, counsel for appellees, and submitted to the court for consideration and decision.

11 United States circuit court of appeals for the ninth circuit, October term, 1899.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Homer S. King, Trustees, and The Central Trust Company of New York, appellees. } No. 495.

Appeal from the circuit court of the United States for the southern district of California.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of California, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

(Endorsed:) Decree. Filed Oct. 9, 1899. F. D. Monckton, clerk.

12 In the United States circuit court of appeals, ninth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and Homer S. King, Trustees, and Central Trust Company of New York. } No. 495.

Petition for and order allowing appeal.

To the judges of the United States circuit court of appeals, ninth circuit:

The United States of America, conceiving itself aggrieved by the decree made and entered herein on the day of October, 1899, appeals from the said decree to the United States Supreme Court, and files herewith its assignment of errors, asserted and intended to be urged upon appeal, and it prays that its appeal may be allowed; and further

prays that upon this appeal being allowed, that all proceedings in this cause may be stayed, pending such appeal.

And your petitioner further prays that the transcript of the record filed in the Supreme Court by the defendants herein upon their appeal heretofore allowed may be used by both parties, and that your petitioner may be heard thereon in the same manner as if records had been filed by the appellants in both cases.

Dated this 4th day of December, 1899.

JOSEPH H. CALL,
Special Assistant United States Attorney,
and of Counsel for United States.

13 *Order allowing same.*

The foregoing petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the transcript of the record filed in the said Supreme Court by the defendants herein, upon their appeal heretofore allowed, may be used by both parties, and that this appeal of the United States may be heard thereon in the same manner as if records had been filed by the appellants in both cases; and to the end that a full and complete transcript of the record shall be made and transmitted to said Supreme Court, the clerk of this court shall make and transmit to the said Supreme Court, in addition to the record filed by the defendants on their appeal, a true copy of the petition of the United States for appeal, its assignment of errors, the order allowing appeal, and all other proceedings in the case not included in the transcript of the record filed by the defendants, as aforesaid.

Dated this day of December, 1899.

14 In the United States circuit court of appeals, ninth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and Homer S. King, Trustees, and Central Trust Company of New York. } No. 495.

Assignment of errors.

The United States, in connection with its petition for appeal therein, presents and files therewith its assignment of errors, as to which matters and things it says that the decree entered herein on the day of October, 1899, is erroneous, to wit:

1. The court erred in decreeing that the United States take nothing as to the lands, or any of them, adjudged by said decree to have been sold by the Southern Pacific Railroad Company to third persons in good faith and for value, being the lands described on pages No. 15 and No. 20, inclusive, of said decree, except the southeast one quarter of section 25, township 9 north, range 15 west, San Bernardino meridian, it appearing that said lands had been contracted to be sold by said railroad company to third persons upon partial payments, and that only a part of

the purchase price had been paid, and that no sale had been completed or deed to any of said lands executed prior to the commencement of this suit.

15 2. The court erred in refusing to adjudge the United States to be the owner of and to quiet its title to the said lands, or any of them.

3. The court erred in refusing to adjudge that the defendants had no title or interest in said lands or any of them.

4. The court erred in refusing to adjudge the United States to be the owner of the legal title to said lands and of all interest and estate claimed by the Southern Pacific Railroad Company therein, subject only to the amounts favor of said purchasers respectively to the equities in actually paid upon the purchase price.

5. The court erred in adjudging that patents issued by the United States to defendant Southern Pacific Railroad Company for said lands, pending this suit, granted to or conferred upon the defendants, or any of them, any right, title, or interest in said lands or any of them.

6. The court erred in adjudging that said lands described aforesaid, or any of them, were sold by the Southern Pacific Railroad Company to third persons in good faith or for value.

7. The court erred in adjudging that the terms of the contracts, under which said purchasers and each of them contracted to purchase said lands, did not carry notice to such purchasers, and each of them, of the right and title of the United States to said lands.

8. The court erred in adjudging that its said decree shall not cancel or vacate any patent issued by the United States to the Southern Pacific Railroad Company for lands sold by it to a bona fide purchaser.

9. The court erred in refusing to adjudge what title and rights the defendants before the court had in said lands.

16 10. The court erred in refusing to give the United States a decree for those lands adjudged to have been sold by the Southern Pacific Railroad Company since November 22, 1889, the date of commencement of the suits in the cases reported in 146 U. S., 615-619.

11. The court erred in refusing to adjudge that the Southern Pacific Railroad Company and those in privity with that company, who contracted to purchase lands while the former suits reported in 146 U. S., 615-619, were pending, were not bound by the adjudications in those cases.

12. The court erred in adjudging that any executory contract for the sale of land made by the Southern Pacific Railroad Company is valid as to any payment made thereon after notice to the purchaser of the rights of the United States.

Wherefore, the United States prays that said decree may be reversed in said particulars and that the United States be granted the relief sought.

JOSEPH H. CALL,
Special Assistant United States Attorney
and of Counsel for the United States.

(Endorsed:) Petition for appeal of U. S., assignment of errors, &c. Filed December 4, 1899, F. D. Monckton, clerk, U. S. circuit court of appeals for the ninth circuit.

17 At a stated term, to wit, the October term, A. D. 1899, of the United States circuit court of appeals for the ninth circuit, held at the court room, in the city and county of San Francisco, on Monday the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-nine. Present, the Honorable William W. Morrow, circuit judge; Honorable John J. De Haven, district judge.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York. } No. 495.

The petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the transcript of the record filed in the Supreme Court by the defendants herein, upon their appeal heretofore allowed, may be used by both parties, and that this appeal of the United States may be heard thereon in the same manner as if records had been filed by the appellants in both cases; and to the end that a full and complete transcript of the record shall be made and transmitted to said Supreme Court the clerk of this court shall make and transmit to the said Supreme Court, in addition to the record filed by the defendants on their appeal, a true copy of the petition of the United States for appeal, its assignment of errors, the order allowing appeal, and all other proceedings in the case not included in the transcript of the record filed by the defendants as aforesaid.

18 United States circuit court of appeals for the ninth circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York, appellees. } No. 495.

Certificate of clerk C. C. A. to transcript.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing seventeen (17) pages, numbered from one (1) to seventeen (17), inclusive, to be a full, true, and correct copy of the transcript of the record, the order of submission, the decree, the petition for an appeal to the Supreme Court of the United States, the assignment of errors filed therewith, and the order allowing the appeal to the Supreme Court of the United States in the above-entitled cause, as the originals thereof appear of record in my office, the same being all proceedings in the case not included in the transcript of the record filed in the Supreme Court of the United States by the appellees herein upon their appeal heretofore allowed, and that the same together constitute the transcript of the record on appeal to

the Supreme court of the United States in the above-entitled
19 cause in accordance with the order allowing the appeal of the United States and as requested and approved by the special United States attorney.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 21st day of December, A. D. 1899.

[SEAL.] F. D. MONCKTON, *Clerk.*

20 UNITED STATES OF AMERICA, *ss.*

Citation.

To the Southern Pacific Railroad Company, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within sixty days from the date hereof, pursuant to an appeal allowed on behalf of the United States in open court on the fourth day of December, A. D. 1899, in the United States circuit court of appeals, ninth circuit, wherein the United States is plaintiff and appellant and you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this fourth day of December, A. D. 1899.

WM. W. MARVIN,
United States Circuit Judge and Presiding Judge of the United States Circuit Court of Appeals, Ninth Circuit.

21 [Indorsed:] No. 495. In the Supreme Court of the United States. United States vs. S. P. R. R. Co. et al. Citation on appeal of the United States to Supreme Court U. S. Filed December 14, 1899. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

A copy of this citation was served on me on December 9th, 1899.

WM. SINGER, Jr.,
Atty. for the Defendants (Appellees).

(Indorsement on cover:) File No., 17609. U. S. C. C. of Appeals, 9th circuit. Term No., 185. The United States, appellant, vs. The Southern Pacific Railroad Company, D. O. Mills et al. Filed January 15, 1900. Cross-appeal. (See Term No., 152, A. D. 1900. File No., 17556 for record on main appeal).

O

No. 185 24.

Br. of Payson & Evarts for Appellees

FILED
JAN 28 1901
JAMES H. McKENNEY,

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 185.

Filed Jan. 28, 1901.

THE UNITED STATES,
Appellant,

against

THE SOUTHERN PACIFIC RAILROAD COMPANY (D. O. MILLS and HOMER S. KING, Trustees), and THE CENTRAL TRUST COMPANY OF NEW YORK,
Appellees.

CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR APPELLEES.

L. E. PAYSON,
MAXWELL EVARTS,
Of Counsel for Appellees.

G. G. Rumsey, Walker and Centre Street, N. Y.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 185.

THE UNITED STATES,
Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY (D. O. MILLS and HOMER S. KING, Trustees), and THE CENTRAL TRUST COMPANY OF NEW YORK,
Appellees.

CROSS APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF OF APPELLEES.

The main question upon this cross-appeal is whether the decision of both courts below that all purchases from the Southern Pacific Railroad Company of the lands erroneously patented to

the Railroad by the Government were protected by the adjustment acts of March 3, 1887 (24 U. S., Stat., 556), and March 2, 1896 (29 U. S. Stat., 42), as construed by this court in the two Winona cases (165 U. S., 462 and 483) is right. As this is substantially the same question which was raised in the case of the United States vs. the Southern Pacific Railroad Company, which is No. 186 upon the present docket of this Court, and is to be argued with this case, we have considered it unnecessary to here repeat at length our argument presented in that case, and we repectfully refer the Court to the brief in No. 186 for our views upon the subject.

There is, however, an additional reason why this cross-appeal should be dismissed which is peculiar to this particular case. In subdivision IX. of the bill of complaint (Main Record in No. 152, p. 15), it is stated:

> "That the officers of the interior department have erroneously and without any authority of law caused to be issued to defendant Southern Pacific Railroad Company patents of the United States, in due form of law, for the tracts of land described in plaintiff's exhibit "A" hereto attached and made a part hereof."

Subsequently and in subdivision XII. of the bill the only prayer of the bill which seeks to cancel any patents from the Government to the Railroad is as follows:

> "Your orators pray that their title to said lands described in said Exhibit "A" hereto annexed may be quieted; that said pretended patents be vacated and decreed to be void."

Now, the only patents which the bill asks to have canceled are those conveying the lands described in Exhibit "A" to the bill, and it appears, from an examination of the record, that none of the land excepted from the operation of the final decree, upon the ground that it had been sold to *bona fide* purchasers (Record, p. 353 *et seq.*), is a part of the land described in Exhibit "A," attached to the complaint (see Appendix), and that, therefore, there is no prayer in the bill asking that the patents covering the land conveyed by the Railroad to *bona fide* purchasers should be canceled.

We take it that it is clear that the rights of *bona fide* purchasers in the land erroneously patented to the United States cannot be annulled and the patents for such land canceled by a bill seeking simply to remove a cloud upon the title

to land of the complainant, and that all relief seeking the cancellation of patents is necessarily limited to the patents which the bill specifically asks to be canceled.

As to this, the Circuit Court of Appeals said, in its opinion, at page 2671 of the main record, in No. 152:

> "We are further of the opinion that the bill of complaint did not call for the cancellation of the patents for the lands described. The bill alleged that the officers of the Interior Department had erroneously and without any authority of law caused to be issued to the defendant Southern Pacific Railroad Company patents of the United States in due form of law, for the tracts of land described in plaintiffs' Exhibit "A" attached to the complaint. The prayer of the bill was that plaintiffs' title to the lands described in Exhibit "A" should be quieted, and that the pretended patents for said lands be vacated and decreed to be void, etc. The lands excepted from the decree as having been sold by the Southern Pacific Company to *bona fide* purchasers who purchased the same in good faith and for value, are not described in exhibit "A," and were not therefore properly involved in the suit for the cancellation of patents."

In the case of Dick vs. Foraker, 155 U. S., 404, 414, it was said:

"The appellee then, seeks to have a cloud removed from his title when he holds no title whatever; for, of course, it follows that if the court was without jurisdiction the decree by it rendered was utterly void, and the sale, having been made under the decree, was equally vicious and wholly null. The rule in ejectment is that the plaintiff must recover on the strength of his own title, and not on the weakness of the title of his adversary. A like rule obtains in an equitable action to remove a cloud from a title; and title in the complainant is of the essence of the right to relief. In Frost v. Spitley, 121 U. S., 552, 556, we said: 'Under the jurisdiction and practice in equity independently of statute, the object of a bill to remove a cloud upon title, and to quiet the possession of real estate, is to protect the owner of the legal title from being disturbed in his possession, or harassed by suits in regard to that title; and the bill cannot be maintained without clear proof of both possession and legal title in the plaintiff.' Alexander v. Pendleton, 8 Cranch., 462; Peirsoll v. Elliott, 6 Pet., 95; Orton v. Smith, 18 How., 263; Crews v. Burcham, 1 Black., 352; Ward v. Chamberlain, 2 Black., 430. As observed by Mr. Justice GRIER in Orton v. Smith, 'Those only who have a clear, legal and equitable title to land, connected with possession, have any right to claim the interference of

a court of equity to give them peace or dissipate a cloud on the title.' 18 How., 265.

"The law of Arkansas authorizes a bill to remove a cloud on a title whether or not the complainant be in possession. Act of March 26, 1891, No. 74, Stats. of 1891, 132. By reason of this statute a bill in equity may be maintained in the Circuit Court of the United States by a person not in possession against another who is also out of possession. Holland v. Challen, 110 U. S., 15, 25. But this does not make the complainant's rights any the less dependent upon title in him nor does it put him in a position to have a cloud removed from a title which has no existence. In Frost v. Spitley, *supra*, it was said, p. 557:

"A statute of Nebraska authorizes an action to be brought 'by any person or persons, whether in actual possession or not, claiming title to real estate, against any person or persons who claim an adverse estate or interest therein, for the purpose of determining such estate or interest, and quieting the title to said real estate'. Nebraska Stat., Feb. 24, 1873; Rev. Stat., 1873, p. 882. . . . The requisite of the plaintiff's possession is thus dispensed with, but not the other rules which govern the jurisdiction of courts of equity over such bills. Under that statute, as under the general jurisdiction in equity, it is 'the title', that is to say, the legal title, to real estate, that is to be quieted

against claims of adverse estates or interests. In State v. Sioux City & Pacific Railroad, the Supreme Court of Nebraska said: 'Whatever the rule may be as to a party in actual possession, it is clear that a party not in possession must possess the legal title, in order to maintain the action'. 7 Nebraska, 357, 376. And in Holland v. Challen, above cited, this court said: 'Undoubtedly, as a foundation for the relief sought, the plaintiff must show that he has a legal title to the premises'. The necessary conclusion is, that Spitley, not having the legal title of the lots in question, cannot maintain his bill for the purpose of removing a cloud on the title. * * *

"There are other contentions urged, but they are all covered by what has been already said. They either arise from the erroneous postulate that the complainant's title is not void, but simply voidable, or are predicted on the equally unsound premise that one having no title can successfully invoke the aid of a court of equity to 'remove a cloud' from such non-existent title; that is to say, can ask a court to substract something from nothing."

In the case of United States vs. Winona and St. Paul Railroad, 67 Fed. Rep., 948, it was said at page 959:

"It is not difficult to determine whether the certificates issued in this case were void

or voidable when tested by these rules. Jurisdiction of the subject-matter is the power to deal with the general abstract question, to hear the particular facts in any case relating to this question, and to determine whether or not they are sufficient to invoke the exercise of that power. The test of jurisdiction is whether the tribunal has power to enter upon the inquiry, not whether its conclusion in the course of it is right or wrong. Foltz v. Railway Co., 8 C. C. A., 635, 60 Fed. 316, 318, and cases cited.

" When these certificates were issued, the Winona Railroad Company had undoubtedly applied to the land department for conveyances of the lands in controversy to the state for its benefit. These lands were a part of the public lands of the United States, the disposition of which had been intrusted to that department by the acts of congress which established it and defined the powers and duties of its officers. Moreover, the acts of congress under which the Winona Company claimed these lands expressly provided, as we have seen, that the secretary of the interior should indicate the lands granted under them in all cases. The conclusion is irresistible that these acts conferred the power and imposed the duty upon the officers of the land department to hear and determine the ultimate question whether or not the railroad company was entitled to

these lands under its grants, and to 'indicate' the lands granted by certificates or patents to the state. In no other way could they have discharged the duties these acts imposed upon them. In deciding this question they necessarily considered whether or not the railroad company had so far complied with the acts granting the lands that it had earned them, the character of the lands themselves, and the class to which they belonged, the time of the definite location of the line of the railroad, the homestead entries and preemption filings that were then upon the lands, the cancellation of all these entries and filings that had been made, and finally, the legal effect of all these and all other material facts upon the claim of the railroad company to receive the lands under the acts of congress. It now appears that they were mistaken as to the legal effect of these facts, but the question they decided was one which the acts of congress authorized and required them to decide—one which they were obliged to decide before they issued the certificates; and, although their decision and their conveyances evidenced by these certificates may be voidable, they are not absolutely void. *They are impregnable to collateral attack, and they conveyed the legal title to the lands to the state and its grantees.*"

Our proposition is simply that no relief can

be had under the bill of complaint in this suit as to any lands purchased from the railroad by *bona fide* purchasers, for the reason that the bill does not ask to cancel the patents conveying such land to the Railroad Company, but is limited in its relief in this regard to the land conveyed by the patents, which it specifically asks to have canceled. In other words, a patent of lands from the Government, however erroneously obtained, cannot be attacked collaterally, and can only be set aside in a direct proceeding for that purpose.

With this one additional suggestion, we respectfully submit the case upon our brief in the case of United States vs. Southern Pacific Railroad, No. 186, submitted and argued with this case.

L. E. PAYSON,
MAXWELL EVARTS,
Of Counsel for Appellees.

APPENDIX.

STATEMENT OF LANDS *excepted from Decree as held by bona fide Purchasers; showing Patents and Sales thereof, with references to pages in record in main suit No. 152.*

DESCRIPTION OF LANDS.				PATENTS.				SALES.			REMARKS.
SUBDIVISIONS.	Sec.	T.-N.	R.-W.	Br. Line.	M. Line.	Dates.	Tran	Cont.	Dates.	Tran.	
Fracl. N. ½	7	7	18	27		28 Nov. '94	2576	11206	21 Sept. '92	2544	
N. ½	9	"	"	"		" " "	"	11207	" " "	"	
N. ½ of N. E. ¼ / S. W. ¼ of N. E. ¼	1	8	14		26	22 Dec. '94	2563	4955	7 Nov. '85	"	
N. W. ¼	"	"	"		"	" " "	"	4954	" " "	"	
N. W. ¼ of S. E. ¼	"	"	"		"	" " "	"	4956	" " "	"	
S. W. ¼	"	"	"		"	" " "	"	4957	" " "	"	
N. E. ¼	3	"	"		"	" " "	"	5028	3 Dec. '85	"	
N. W. ¼	"	"	"		"	" " "	"	5029	" " "	"	
S. E. ¼	"	"	"		"	" " "	"	5211	12 Jan. '86	"	Deeded.
S. W. ¼	"	"	"		"	" " "	"	5458	16 Mar. '86	"	
N. ½ of N. E. ¼	5	"	"		"	" " "	"	5044	9 Dec. '85	"	
N. ½ of N. W. ¼	"	"	"		"	" " "	"	4988	21 Nov. '85	"	
N. ½ of S. W. ¼	11	"	"		"	" " "	"	5019	1 Dec. '85	"	
S. E. ¼	"	"	"		"	" " "	"	5019	" " "	"	
N. ½	"	"	"		"	" " "	"	5019	" " "	"	
N. E. ¼	1	8	16	27		28 Nov. '94	2576	7628	30 June, '87	"	
N. W. ¼	"	"	"	"		" " "	"	7629	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7630	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7631	" " "	"	
N. E. ¼	3	"	"	"		" " "	"	7684	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7685	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7686	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7687	" " "	"	
N. E. ¼	5	"	"	"		" " "	"	7688	" " "	2545	
N. W. ¼	"	"	"	"		" " "	"	7689	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7690	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7691	" " "	"	
All	11	"	"	"		" " "	"	7500	31 May, '87	"	
N. W. ¼	13	"	"	"		" " "	"	8406	28 Sept. '87	"	
S. E. ¼	"	"	"	"		" " "	"	8407	" " "	"	
Fracl. N. ½	19	9	14		22	10 July, '94	1989	5041	8 Dec. '85	"	
S. E. ¼	"	"	"		"	" " "	"	5042	" " "	"	
S. W. ¼	"	"	"		"	" " "	"	5043	" " "	"	
E. ½	21	"	"		"	" " "	"	4593	9 May, '85	"	
W. ½	"	"	"		"	" " "	"	4672	15 June '85	"	
All	23	"	"		"	" " "	"	4576	5 May, '85	"	
All	25	"	"		"	" " "	"	4533	16 April '85	"	
N. ½	27	"	"		"	" " "	"	4603	12 May, '85	"	
N. ½	29	"	"		"	" " "	"	4985	21 Nov. '85	"	
S. ½	"	"	"		"	" " "	"	4986	" " "	"	
E. ½	31	"	"		"	" " "	"	4987	" " "	"	
N. W. ¼	"	"	"		"	" " "	"	4998	25 Nov. '85	2546	Deeded.
S. W. ¼	"	"	"		"	" " "	"	4999	25 Nov. '85	"	
N. ½	33	"	"		"	" " "	"	5026	3 Dec. '85	"	Deeded.
S. ½	"	"	"		"	" " "	"	5027	3 Dec. '85	"	

5357

Description of Lands.				Patents.				Sales.				Remarks.
Subdivisions.	Sec.	T. N.	R. W.	Br. Line.	M. Line.	Dates.	Tran.	Cont.	Dates.	Tran.	
All	35	9	14		22	10 July, '94	1989	5018	3 Dec. '85	2546	Deeded.
N. E. ¼	17	9	15		"	" " "	"	9654	1 June, '88	"	
S. E. ¼	"	"	"		"	" " "	"	9655	" " "	"	
N. W. ¼	"	"	"		"	" " "	"	7678	30 June, '87	"	
S. W. ¼	"	"	"		"	" " "	"	7679	" " "	"	
N. E. ¼	19	"	"		"	" " "	"	7674	" " "	"	
N. W. ¼	"	"	"		"	" " "	"	7675	" " "	"	
S. E. ¼	"	"	"		"	" " "	"	7676	" " "	"	
S. W. ¼	"	"	"		"	" " "	"	7677	" " "	"	
S. E. ¼	21	"	"		"	" " "	"	7758	11 July, '87	"	Deeded.
S. W. ¼	"	"	"		"	" " "	"	7759	" " "	"	Deeded.
N. ½	23	"	"		"	" " "	"	7733	9 July, '87	"	
S. ½	"	"	"		"	" " "	"	7734	" " "	"	
N. E. ¼	25	"	"		"	" " "	"	7620	28 June, '87	"	
N. W. ¼	"	"	"		"	" " "	"	7621	" " "	"	
S. E. ¼	"	"	"		"	" " "	"	6707	11 April, '87	"	Deeded.
S. W. ¼	"	"	"		"	" " "	"	6708	" " "	"	
N. ½	27	"	"		"	" " "	"	7735	9 July, '89	"	Deeded.
S. ½ of S. W. ¼—S. E. ¼	"	"	"		"	" " "	"	7736	" " "	"	Deeded.
N. E. ¼	35	"	"		"	" " "	"	7828	16 July, '87	"	
N. ½ of N. W. ¼	"	"	"		"	" " "	"	7737	9 July, '87	"	
N. E. ¼	13	9	16		"	" " "	"	7634	30 June, '87	"	
N. W. ¼	"	"	"		"	" " "	"	7635	" " "	"	
S. E. ¼	"	"	"		"	" " "	"	7636	" " "	"	
S. W. ¼	"	"	"		"	" " "	"	7637	" " "	"	
N. E. ¼	19	"	"	27		28 Nov. '94	2576	7638	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7639	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7640	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7641	" " "	"	
N. E. ¼	21	"	"	"		" " "	"	7642	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7643	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7644	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7645	" " "	"	
N. ½	23	"	"			0 July, '94	1989	9663	6 June, '88	"	Deeded.
N. E. ¼ of S. E. ¼	"	"	"			" " "	"	9621	21 May, '88	"	
E. ½ of N. E. ¼	25	"	"		27	27 July, '95	2585	7646	30 June, '87	"	
W. ½ of N. E. ¼	"	"	"	27		28 Nov. '94	2576	7646	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7647	" " "	"	
N. E. ¼ of S. E. ¼	"	"	"		27	27 July, '95	2585	7648	" " "	"	
N. W. ¼ of S. E. ¼	"	"	"	27		28 Nov. '94	2576	7648	" " "	"	
S. ½ of S. E. ¼	"	"	"	"		" " "	"	7648	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7649	" " "	2547	
N. E. ¼	27	"	"	"		" " "	"	7650	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7651	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7652	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7653	" " "	"	

Description of Lands.				Patents.				Sales.			Remarks.
Subdivisions.	Sec.	T.-N.	R.-W.	Br. Lise.	M. Lise.	Dates.	Trans.	Cost.	Dates.	Trans.	
N. W. ¼	29	9	16	27		28 Nov. '94	2576	7654	30 June, '87	2547	
S. W. ¼	"	"	"	"		" " "	"	7655	" " "	"	
N. E. ¼	"	"	"	"		" " "	"	9339	10 Feb. '88	"	
S. E. ¼	"	"	"	"		" " "	"	9340	" " "	"	Deeded.
N. ½ of S. W. ¼	13	8	16	"		" " "	"	8408	28 Sept. '87	2545	
S. E. ¼ of S. W. ¼	"	"	"	"		" " "	"	8408	" " "	"	
All	15	"	"	"		" " "	"	4538	21 April, '85	"	
N. E. ¼	23	"	"	"		" " "	"	7632	30 June, '87	"	
N. W. ¼	"	"	"	"		" " "	"	7633	" " "	"	
S. E. ¼—Lots 1, 2, 3, 4	9	8	17	"		" " "	"	3596	24 May, '84	"	Deeded.
Lot 1	27	"	"	"		" " "	"	3596	" " "	"	do.
All Fracl	29	"	"	"		" " "	"	3596	" " "	"	do.
All Fracl	31	"	"	"		" " "	"	3596	" " "	"	do.
All	33	"	"	"		" " "	"	3596	" " "	"	do.
All Fracl	35	"	"	"		" " "	"	3596	" " "	"	do.
S. W. ¼ of S. W. ¼	13	8	18	"		" " "	"	11330	18 Jan. '94	"	
Lots 1, 2, 3	"	"	"	"		" " "	"	11330	" " "	"	
N. E. ¼	15	"	"	"		" " "	"	11132	11 April, '92	"	
N. W. ¼	"	"	"	"		" " "	"	11133	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	11134	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	11135	" " "	"	
S. E. ¼ of S. E. ¼	17	"	"	"		" " "	"	11378	12 April, '95	"	
W. ½ of S. E. ¼	"	"	"	"		" " "	"	11378	" " "	"	
E. ½	21	"	"	"		" " "	"	10955	25 Jan. '92	"	
S. W. ¼	"	"	"	"		" " "	"	11148	13 May, '92	"	
All	23	"	"	"		" " "	"	10955	25 Jan. '92	"	
N. ½ of S. E. ¼	7	9	13		22	10 July, '94	1989	5057	11 Dec. '85	"	Deeded.
S. W. ¼—N. ½	"	"	"		"	" " "	"	5057	11 Dec. '85	"	Deeded.
W. ½ of N. W. ¼	9	"	"		"	" " "	"	6025	10 Nov. '86	"	
N. W. ¼ of S. E. ¼	17	"	"		"	" " "	"	4472	24 Mch. '85	"	
W. ½ of N. E.—W. ½	"	"	"		"	" " "	"	4472	" " "	"	
All	19	"	"		"	" " "	"	4493	31 Mch. '85	"	
N. E. ¼ of N. W. ¼	31	"	"		"	" " "	"	4494	" " "	"	
W. ½ of N. W. ¼	"	"	"		"	" " "	"	4494	" " "	"	
N. W. ¼ of S. W. ¼	"	"	"		"	" " "	"	4494	" " "	"	
N. E. ¼	31	9	16	27		28 Nov. '94	2576	8772	12 Nov. '87	2547	Deeded.
S. W. ¼	"	"	"	"		" " "	"	7657	30 June, '87	"	
N. E. ¼	33	"	"	"		" " "	"	7658	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7659	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7660	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7661	" " "	"	
N. E. ¼	35	"	"	"		" " "	"	7662	" " "	"	
N. W. ¼	"	"	"	"		" " "	"	7663	" " "	"	
S. E. ¼	"	"	"	"		" " "	"	7664	" " "	"	
S. W. ¼	"	"	"	"		" " "	"	7665	" " "	"	
Lots 1, 2, 3, 4	33	9	17	"		" " "	"	3596	24 May, '84	"	Deeded.

Supreme Court of the United States.

Nos. 18 and 24.—October Term, 1901.

The Southern Pacific Railroad Company et al., Appellants, vs. The United States, Appellee.	18	Cross Appeals from the United States Circuit Court of Appeals for the Ninth Circuit.
The United States, Appellant, vs. The Southern Pacific Railroad Company et al., Appellees.	24	

[January 6, 1902.]

Mr. Justice Brewer delivered the opinion of the Court.

On May 14, 1894 the United States filed in the Circuit Court for the Southern District of California a bill of complaint against the Southern Pacific Railroad Company, (hereinafter called the Southern Pacific,) and others, seeking to have certain patents canceled and their title quieted to a large body of land, including those described in said patents. Upon pleading and proofs a decree was entered in favor of the United States on June 6, 1898, quieting their title to most of the lands described in the bill. (86 Fed. Rep. 962.) Cross appeals were taken from such decree to the Circuit Court of Appeals for the Ninth Circuit, by which court the decree was affirmed on October 2, 1899. (98 Fed. Rep. 27.) From such decree of affirmance both parties have appealed to this court.

The lands in controversy were within the grant made July 27, 1866, (14 Stat. 292,) to the Atlantic and Pacific Railroad Company, (hereinafter called the Atlantic and Pacific,) in aid of its projected line from Springfield, Missouri, to the Pacific Ocean, and were situated along that line between the eastern boundary of California and the Pacific Ocean. The Southern Pacific claims title to these lands by virtue of the eighteenth section of that act and its proceedings thereunder, had with the express approval of Congress.

Litigation has heretofore been had between the United States and the Southern Pacific in reference to lands along the line of the Atlantic and Pacific, the result of which litigation will be found in the following decisions of this court: *United States* v. *Southern Pacific Railroad Company*, (146 U. S. 570;) *United States* v. *Colton Marble & Lime Company*, and *United States* v. *Southern Pacific Railroad Company*, (Id. 615,) and *Southern*

Pacific Railroad Company v. *United States*, (168 U. S. 1.) Those decisions are claimed by the government to be controlling of this case on the principle of *res judicata*.

There are, therefore, two distinct questions presented for our consideration: First, whether the Southern Pacific took any title to these lands by virtue of the act of 1866 or subsequent legislation? and, second, do the prior decisions of this court control the determination of this case?

With reference to the first question, a further statement of facts is necessary. The act of 1866 chartered the Atlantic and Pacific, empowered it to build a railroad from Springfield in Missouri to the Pacific Ocean, the description of the latter part of the route being in these words:

"Thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado River, at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific."

By the third section a grant of lands was made to said company in these words:

"SEC. 3. *And be it further enacted*, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, . . . every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections and not including the reserved numbers."

The company filed its map of definite location in 1872, but never did any work in the way of constructing that part of its road from the Colorado River, that being the eastern boundary of California, to the Pacific Ocean. On July 6, 1886, Congress passed an act forfeiting the lands granted to the Atlantic and Pacific, so far as they were adjacent to and coterminous with the uncompleted portions of the road. (24 Stat. 123.) By this act the interest of the Atlantic and Pacific in public lands in the State of California was divested and restored to the United States.

On December 2, 1865, the Southern Pacific was incorporated under the laws of California, "for the purpose of constructing, owning and main-

taining a railroad from some point on the bay of San Francisco in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the town of San Diego in said State, thence eastward through the said county of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad from said eastern line of the State of California to the Mississippi River."

Section 18 of the act of 1866 reads as follows:

"*And be it further enacted*, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

On January 3, 1867, the Southern Pacific filed in the Interior Department a map of a route from San Francisco via Mojave to Needles, on the Colorado River. This line from Mojave to Needles is on the same general course and contiguous to that adopted by the Atlantic and Pacific. The Secretary of the Interior refused to accept or approve the map on the ground that this particular part of the line was not authorized by the charter of the Southern Pacific. On April 4, 1870, the legislature of California passed the following act:

"Whereas, by the provisions of a certain act of Congress of the United States of America, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the State of California,' approved July 27, 1866, certain grants were made to, and certain rights, privileges, powers and authority were vested in and conferred upon the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the State of California, therefore, to enable the said company to more fully and completely comply with and perform the requirements, provisions and conditions of the said act of Congress, and all other acts of Congress now in force, or which may hereafter be enacted, the State of California hereby consents to said act; and the said company, its successors and assigns, are hereby authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the State of California by such route as the company shall determine to be the most practicable, and to file new and amendatory articles of association, and the right, power and privileges hereby granted to, conferred upon and vested in them, to construct, maintain and operate, by steam or other power, the said railroad and telegraph line mentioned in said act of Congress, hereby confirming to and vesting in the said company, its successors and assigns, all the rights, privileges, fran-

chises, power and authority conferred upon, granted to or vested in said company by the said acts of Congress and any act of Congress which may be hereafter enacted." (Statutes California, 1869–1870, p. 883.)

And on June 28, 1870, Congress passed the following joint resolution (16 Stat. 382):

"*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act."

Along this general line the Southern Pacific constructed its road, as California said, in reference to the grant made to the Southern Pacific by section 18 of the act of Congress of July 27, 1866, that it "hereby consents to said act," and as Congress, by its resolution, approved the route selected by the Southern Pacific as a route authorized by that act, no one can question that the construction of the road was under such circumstances as entitle the company to the benefit of the grant made by said eighteenth section of the act of 1866.

By the act of 1866, Congress made grants of land to two different companies; by the third section to the Atlantic and Pacific, and by the eighteenth section to the Southern Pacific. The settled rule of construction is that where by the same act, or by acts of the same date, grants of land are made to two separate companies, in so far as the limits of their grants conflict by crossing or lapping, each company takes an equal, undivided moiety of the lands within the conflict. Neither acquires all by priority of location or priority of construction. (*St. Paul Railroad* v. *Winona Railroad*, 112 U. 720; *Sioux City Railroad* v. *Chicago Railroad*, 117 U. S. 406; *Donahue* v. *Lake Superior Canal &c. Co.*, 155 U. S. 386; *Sioux City &c. Railroad Co.* v. *United States*, 159 U. S. 349.)

The question as to the two grants under this act of 1866 was presented to Mr. Justice Lamar, at that time Secretary of the Interior, and his ruling

to the same effect appears in a letter of instructions to the acting Commissioner of the General Land Office on November 25, 1887. (6 Land Dec. 349.) In that letter he said:

"The Southern Pacific Company located its main line January 3, 1867, and by the terms of the grant its right immediately attached to every odd section of land, not of the character excepted by the grant, and within the ten-mile limit, subject, however, to be divested to the extent of a half interest in every such odd section that might fall within the common limits of both roads, after the filing of the map of definite location by the Atlantic and Pacific Company.

"The Atlantic and Pacific Company filed its map of definite location April 11, 1872, and April 16, 1874, showing that the primary or granted limits of said road overlapped and conflicted with the primary or granted limits of a portion of the Southern Pacific road. As to the lands falling within the granted limits of both roads, the filing of the map of definite location by the Atlantic and Pacific Company, showing such conflict, immediately divested the Southern Pacific Company of the right and title to a half interest in all such odd sections, and from that moment and by that act the two companies became entitled to equal, undivided moieties in such sections, without regard to the priority of location of the line of the road, or priority of construction; the right of each company relating back to the date of the grant. (*St. Paul & Sioux City R. R. Co.* v. *Winona & St. Paul R. R. Co.*, 112 U. S. 720; *Sioux City R. R. Co.* v. *Chicago R. R. Co.*, 117 U. S. 406.)"

As against this, it is contended that Congress could not have intended a road running from the western to the eastern border of California, parallel and contiguous to the Atlantic and Pacific road; that it must have intended a connection between the two roads on the western boundary or border of the State—especially in view of the fact that the charter of the Southern Pacific contemplated only a line along the western part of the State from San Francisco to San Diego. Whatever doubts there might be in respect to this matter are removed by the action taken by the Southern Pacific and the resolution of June 28, 1870. The railroad company assumed that it had a right under the act of 1866 to locate a line to the eastern boundary of California, and did locate such a line, and filed a map thereof with the Secretary of the Interior, and Congress by the joint resolution of June 28 in effect accepted and approved that line, and declared that the railroad company might construct its road on the route indicated on that map.

Neither is the date of this resolution the time at which the rights of the railroad company arose, as is contended by counsel. No new land grant was contemplated; no substitution of one grant for another, or of one line for another. The obvious purpose was to accept the line proffered by the road as the line intended by the act of 1866, and the grant made by the act of 1866 was recognized as rightfully to be used in aid of the construction of a road along the line suggested by the company.

Neither is it material whether the line indicated on the map filed is to be taken as a line of general route or of definite location, for in fact the road was constructed along that line, "as near as may be," in the language of the resolution, and the road has been accepted by the government.

Neither does the fact that the line of road contemplated by the Southern Pacific's charter, at the time of the passage of the act of 1866, was along the western border of the State, prevent the operation of the grant. It is well settled that Congress has power to grant to a corporation created by a State additional franchises—at least franchises of a similar nature. (*Sinking Fund Cases*, 99 U. S. 700, 727; *Pacific Railroad Removal Cases*, 115 U. S. 1, 15; *California* v. *Pacific Railroad Company*, 127 U. S. 1; *United States* v. *Stanford*, 161 U. S. 412, 431; *Central Pacific Railroad* v. *California*, 162 U. S. 91, 118, 123.)

In *California* v. *Pacific Railroad Company*, *supra*, this very grant was before the court, and Mr. Justice Bradley, on page 44, having theretofore narrated the facts in reference to various charters and grants, said:

"An examination of the acts referred to in these findings shows that Congress authorized the Southern Pacific Railroad Company to connect with the Atlantic and Pacific Railroad, at such point near the boundary line of the State of California, as it should deem most suitable for a railroad line to San Francisco; and, to aid in the construction of such a railroad line, Congress declared that the company should have similar grants of land, and should be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific. Like powers were also given to the Southern Pacific Railroad Company to construct a line of railroad from Tehachapa Pass, by way of Los Angeles, to the Texas Pacific road at the Colorado River (Fort Yuma). The Southern Pacific Company was not authorized by its original charter to extend its railroad to the Colorado River, as we already know by other cases brought before us, and as appears by the act of the State legislature passed April 4, 1870, which assumed to authorize the company to change the line of its railroad so as to reach the eastern boundary line of the State; thus duplicating the power given to it by the act of Congress. (See the State act quoted in 118 U. S. 399.) This State legislation was probably procured to remove all doubts with regard to the company's power to construct such roads. It is apparent, however, that the franchise to do so was fully conferred by Congress, and that franchise was accepted, and the roads have been constructed in conformity thereto."

We are of the opinion, therefore, that Mr. Secretary Lamar was right in his conclusion that both the grant to the Southern Pacific and that to the Atlantic and Pacific took effect, and being by the same act, so far as there was a conflict, the two companies took equal, undivided moieties of the land.

We pass, therefore, to a consideration of the second question: Do prior decisions of this court control the determination of this case? *United States* v. *Southern Pacific Railroad Company*, (146 U. S. 570;) *United*

States v. *Colton Marble & Lime Co.*, and *United States* v. *Southern Pacific Railroad Company*, (146 U. S. 615,) and *Southern Pacific Railroad Company* v. *United States*, (168 U. S. 1,) are referred to. Those cases were brought by the United States against the Southern Pacific to quiet title to certain lands (but not the lands in controversy here) along the line of the Atlantic and Pacific within the State of California. In the last of these three cases the principle of *res judicata* was invoked and held applicable; and the title of the government to the lands involved was sustained on the ground that the question in controversy had been finally determined in the prior suits. In the opinion filed there was much discussion in respect to *res judicata*, and it was said, on page 48:

"The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remains unmodified."

See also *New Orleans* v. *Citizens' Bank*, (167 U. S. 371, 396,) in which the rule was thus stated:

"The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has under identical circumstances and conditions been previously concluded by a judgment between the parties or their privies."

It becomes, therefore, important to determine what was decided in the prior cases, and in order to a clear understanding these additional facts must be borne in mind: On March 3, 1871, Congress passed an act (16 Stat. 573) to incorporate the Texas and Pacific Railroad Company, the twenty-third section of which reads:

"That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July twenty-seven, eighteen hundred and sixty-six: *Provided, however*, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

On April 3, 1871, the Southern Pacific filed a map of a route from Tehachapa Pass southward by way of Los Angeles to connect with the Texas and Pacific Railroad at the Colorado River, and subsequently con-

structed a road on such line. This line crossed that of the Atlantic and Pacific, the general course of the former being north and south and of the latter east and west. The grants, therefore, to the Atlantic and Pacific by the act of July 27, 1866, and that to the Southern Pacific by the act of March 3, 1871, came in conflict at and near the place of intersection of their lines. The lands in controversy in those suits were lands within the granted limits of both companies at the place of conflict. It was so distinctly stated in the opening of the opinion in the first case referred to:

"The question to be considered is not as to the validity of the grant to the Southern Pacific Company, but only as to its extent. It may be conceded that the company took title to lands generally along its line, from Tehachapa Pass to its junction with the Texas and Pacific; and the contention of the government is here limited to those lands only which lie within the granted limits of both the Atlantic and Pacific and the Southern Pacific Companies, at the crossing of their lines, as definitely located." (p. 592.)

Both grants were grants in *præsenti*, and when the maps of definite location were filed and approved the grants took effect by relation as of the dates of the acts. Hence, if each company filed a map of definite location the title of the Atlantic and Pacific, relating back to the year 1866, was anterior and superior to that of the Southern Pacific, of date 1871, and all the lands within the conflict passed to the Atlantic and Pacific rather than to the Southern Pacific. To avoid the effect of this conclusion—a conclusion resting upon well-settled principles of public land law—the Southern Pacific contended that no map of definite location was ever filed by the Atlantic and Pacific, or approved by the Secretary of the Interior, but after a full examination of the facts this court held otherwise, summing up its conclusions in these words:

"Our conclusions, therefore, are, that a valid and sufficient map of definite location of its route from the Colorado River to the Pacific Ocean was filed by the Atlantic and Pacific Company, and approved by the Secretary of the Interior; that by such act the title to these lands passed, under the grant of 1866, to the Atlantic and Pacific Company, and remained held by it subject to a condition subsequent until the act of forfeiture of 1886; that by that act of forfeiture the title of the Atlantic and Pacific was retaken by the general government, and retaken for its own benefit, and not that of the Southern Pacific Company; and that the latter company has no title of any kind to these lands." (p. 607.)

So, in the opinion in the last of the three cases, is this statement of the facts and question:

"The principal contention of the United States is that the lands in dispute are in the same category in every respect with those in controversy in *United States* v. *Southern Pacific Railroad*, (146 U. S. 570,) and *United States* v. *Colton Marble & Lime Co.*, and *United States* v. *Southern Pacific Railroad*, (146 U. S. 615;) and that, so far as the question of title is concerned, the judgments in those cases have conclusively determined, as

between the United States and the Southern Pacific Railroad Company and its privies, the essential facts upon which the government rests its present claim.

"Stated in another form, the United States insists that in the former cases the controlling matter in issue was, whether certain maps filed by the Atlantic and Pacific Railroad Company in 1872, and which were accepted by the Land Department as sufficiently designating that company's line of road under the act of Congress of July 27, 1866, c. 278, 14 Stat. 292, were valid maps of *definite location;* the United States contending in those cases that they were, and the Southern Pacific Railroad Company contending that they were not, maps of that character; that that issue was determined in favor of the United States; and that as the lands now in dispute are within the limits of the line of road so designated, it is not open to the Southern Pacific Railroad Company, in this proceeding, to question the former determination that such maps sufficiently identified the lands granted to the Atlantic and Pacific Railroad Company by the act of 1866, and were therefore valid maps of definite location." (p. 25.)

And again, on page 29, after a quotation of the twenty-third section of the act of March 3, 1871, is this declaration:

"The Southern Pacific Railroad Company constructed the road thus contemplated, and claims that the lands here in dispute passed to it under the above act of 1871."

So also on page 46:

"The lands now in controversy are situated opposite to and are coterminous with the first, second and fourth sections of the Southern Pacific Railroad as constructed between 1873 and 1877, inclusive, and within the primary and indemnity limits of the grant to the Southern Pacific Railroad Company made by the twenty-third section of the Texas and Pacific act of March 3, 1871."

And on page 61 the conclusion was summed up in these words:

"For the reasons stated, we are of opinion that it must be taken in this case to have been conclusively adjudicated in the former cases, as between the United States and the Southern Pacific Railroad Company—

"1. That the maps filed by the Atlantic and Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to that company by the act of 1866;

"2. That upon the acceptance of those maps by the Land Department the rights of that company in the lands so granted, attached, by relation as of the date of the act of 1866; and

"3. That in view of the conditions attached to the grant, and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the forfeiture act of 1886, the property of the United States, and by force of that act were restored to the public domain without the Southern Pacific Railroad Company having acquired any interest therein that affected the power of the United States to forfeit and restore them to the public domain.

"These grounds being accepted as the basis of our decision, the law in the present case is clearly for the United States; for, as all the lands here in controversy are embraced by the maps of 1872, and therefore appertain

to the line located by such maps, it must be, for the reasons stated in the former decision, that the United States is entitled, as between it and the Southern Pacific Railroad Company, to the relief given by the decree below."

Obviously the fact settled by the decisions in those cases was the filing by the Atlantic and Pacific of an approved map of definite location. Upon that the controversy hinged. Such a map having been filed the title of the Atlantic and Pacific vested as of the date of the act of July 27, 1866, and inasmuch as the Southern Pacific claimed only by a grant of date March 3, 1871, it took no title. This which is apparent from the foregoing quotations is emphasized by the full discussions in the opinions, as well as by the allegations in the pleadings upon which the cases were tried. That fact having been determined must be taken in the present suit as not open to dispute. The Atlantic and Pacific did file a sufficient map of definite location of its line from the Colorado River to the Pacific Ocean, and such map was approved by the Secretary of the Interior. Its title, therefore, to the land within the limits of the grant in California took effect as of date July 27, 1866. No claim of right or title arising only in 1871 and created by an act of that date could affect its title.

But it was not adjudged in those cases either that the Southern Pacific had no title to any real estate by virtue of the act of 1866, or that if there was any real estate to which it had any claim or right by virtue of that act, such claim was not of equal force with that of the Atlantic and Pacific. The general statement at the close of the quotation from 146 U. S. 607, "that the latter company has no title of any kind to these lands," and the similar statement in paragraph 3 of the quotation from 168 U. S. 61, are to be taken as applicable only to the facts presented, and cannot be construed as announcing any determination as to matters and questions not appearing in the records. Of course, the decrees that were rendered in those cases are conclusive of the title to the property involved in them, no matter what claims or rights either party may have had and failed to produce, but as to property which was not involved in those suits they are conclusive only as to the matters which were actually litigated and determined. "On principle, a point not in litigation in one action cannot be received as conclusively settled in any subsequent action upon a different cause, because it might have been determined in the first action." (*Cromwell* v. *County of Sac*, 94 U. S. 351–356.) "The particular matter in controversy in the adverse suit was the triangular piece of ground, which is not the matter of dispute in this action. The judgment in that case is therefore not conclusive in this as to matters which might have been decided, but only as to matters which were in fact decided." (*Last Chance Mining Co.* v. *Tyler Mining Co.*, 157 U. S. 683–687.) The question here presented was not

determined in the prior cases, and is whether the Southern Pacific acquired any title to lands other than those involved in those suits by virtue of the act of 1866, and that question, as we have seen, must be answered in the affirmative. Nor is this a mere technical difference between those cases and this. Counsel for the railroad company call the line from Mojave southward via Los Angeles to connect with the Texas and Pacific a "branch line," and that eastward from Mojave to Needles to connect with the Atlantic and Pacific a "main line;" but by whatever name these two lines are called, they were built under the authority of two different statutes; the line from Mojave southward via Los Angeles under the authority of the act of Congress of March 3, 1871, an act which in terms authorized the building of a road from a point at or near Tehachapa Pass, which is in the vicinity of Mojave, southward by way of Los Angeles to connect with the Texas and Pacific, and gave no authority to build a line eastward from Mojave to connect with the Atlantic and Pacific; the line from Mojave eastward, under the act of 1866, which authorized the Southern Pacific to connect with the Atlantic and Pacific at or near the boundary of the State. The route which was selected by the company for this line was approved by Congress as authorized by the act of 1866. Hence the one line was built under the authority of the act of 1871, and the other under the authority of the act of 1866.

Our conclusions, therefore, are that the United States, having become by the forfeiture act of July 6, 1886, repossessed of all the rights and interests of the Atlantic and Pacific in this grant within the limits of California, hold an equal, undivided moiety in all the odd-numbered sections which lie within the conflicting place limits of the grant to the Atlantic and Pacific and of that made to the Southern Pacific by the act of July 27, 1866; and that the Southern Pacific holds the other equal, undivided moiety therein. The United States and the Southern Pacific being, therefore, tenants in common of a large body of lands, a partition is necessary. It was suggested by Secretary Lamar, in the letter heretofore referred to, that the Southern Pacific take only every other alternate odd-numbered section. We see no impropriety in such mode of partition, though, under the case as it stands, we can make no order to that effect. In whatever way partition may be made, equity requires that the lands which the Southern Pacific has assumed to sell and which were excepted by the Circuit Court from the decree in favor of the United States, and in respect to which they took their cross appeal, must be among those set off to the Southern Pacific, and thus the title of the purchasers be perfected. It is needless, therefore, to consider the merits of the cross appeal of the United States.

It is also unnecessary to determine the rights of the Southern Pacific to lands outside the limits of conflict. It having been adjudged that the

Southern Pacific, by the construction of its road eastward from Mojave to Needles, became entitled to the benefit of the grant made by the eighteenth section of the act of 1866, the adjustment of the grant is properly to be had in the Land Department, subject, of course, if necessary, to further contests in the courts.

The decree of the Circuit Court of Appeals of the Ninth Circuit, affirming the decree of the Circuit Court for the Southern District of California will be reversed and the case remanded to the Circuit Court with instructions to enter a decree quieting the title of the United States to an equal, undivided moiety in all alternate sections within the place or granted limits of the Atlantic and Pacific in California, so far as those limits conflict with the like limits of the Southern Pacific, excepting therefrom those lands in respect to which there has been some prior adjudication, and to dismiss the bill as to all other lands without prejudice to any future suit or action.

True copy.

Test

Clerk Supreme Court, U. S.